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The Solicitors' Journal

[REGISTERED AS A NEWSPAPER.]

VOL. LXXII. No. 7 [PAGES 107 TO 124]. Saturday, February 18, 1928. PRICE 1s.

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The Solicitors' Journal

(ESTABLISHED 1857.)

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Current Topics.

The late Lord Oxford.

1928, THOUGH YET but in its infancy, has wrought a deep gap in the front rank of our citizens: first THOMAS HARDY, then Earl HAIG, and now Lord OXFORD AND ASQUITH: all outstanding figures, commanding the highest respect of their countrymen. Lord OXFORD was called to the Bar by Lincoln's Inn in 1876, after a brilliant career at Oxford, where he had been elected Scholar and later Fellow of Balliol, had won the Craven Scholarship, obtained first-class in "Mods" and "Greats" and served as President of the Union Society. He soon acquired an extensive practice at the Bar—his early training, his gifts as an advocate and his political connexions proving valuable assets—and took silk in 1890. On ceasing to be Home Secretary in 1895 he established the precedent of returning to practise at the Bar, a course at the time openly criticised in view of the fact that as Home Secretary he had had to exercise *quasi*-judicial functions. It was only on his becoming head of the Liberal Government in 1908 that he in fact finally retired from active practice. The Law may be described as Lord OXFORD's first love, and there can be no doubt but that had he remained constant in his undivided devotion to her he would have been honoured with high judicial office; but he left the law for politics. Though there may be differences of opinion as to the measure of his success in that sphere, there is general unanimity on this: Lord OXFORD was a distinguished scholar, a loyal chief, a great statesman, and above all a great gentleman.

To the solicitor branch of the profession Lord OXFORD may be said to have had a personal interest, for in The Law Society's Calendar for 1885 the curious in such matters will find in the list of lecturers the name of H. H. ASQUITH as dealing with common law, his colleagues being E. F. TURNER, who lectured on real property and conveyancing, and A. UNDERHILL, who dealt with equity. In those far-off days Mr. ASQUITH, as he then was, little dreamt, we imagine, that he would hold the Premiership during so many years—years fraught with such tremendous issues—and that in his latest years he would resume his associations with the law, not as a practising barrister, but as a member of the Judicial Committee of the Privy Council, and likewise, by virtue of holding that position, entitled to sit as a member of the House of Lords in its appellate work. So far as we can recall, however, Lord OXFORD AND ASQUITH never actually took part in the judicial work of the House.

Lloyd's.

OF THE many institutions of the City of London that known as LLOYD'S is one of the most interesting as well as important by reason of its humble origin and its later extraordinary development. Its name is derived from EDWARD LLOYD, whose coffee house was the resort of merchants, sea captains and men of business interested in shipping. Being an astute man, LLOYD saw his opportunity of profiting by the class of business in which his customers were engaged by starting *Lloyd's News*, whose *raison d'être* was to furnish intelligence relating to ships and maritime affairs generally. This news sheet, although its life was of short duration, was important, as the precursor of the still existing and vigorous *Lloyd's List*, whose reports of commercial cases in recent years have been found of immense value to the practitioner. For the most part we think of LLOYD'S as the hub of the insurance universe. With insurance, and in particular marine insurance, its history is inextricably bound up. LLOYD'S policy of insurance, the model upon which most others have been fashioned, dates from 1779, and although modified to some extent by added clauses, it remains much as it was when the Committee first drew it up. Besides being the headquarters of marine insurance, LLOYD'S collects and publishes a mass of information with respect to shipping which is of inestimable value to those who go down to the sea in ships and do business in great waters. An institution with such far-ranging activities and with a history so closely interwoven with that of English commerce deserves, as it is about to receive, a volume telling its story in full detail. "A History of Lloyd's from the founding of Lloyd's Coffee House to the Present Day," has been prepared by direction of the Committee of LLOYD'S, by Mr. CHARLES WRIGHT and Mr. C. ERNEST FAYLE, and will be published by Messrs. MACMILLAN. This, it is true, is not the first work to treat of LLOYD'S. Rather more than fifty years ago Mr. FREDERICK MARTIN, the originator, and for several years the editor, of the "Statesman's Year Book," brought out a volume dealing with LLOYD'S, but a great deal of water has flowed under London Bridge during the intervening period, and there is certainly room for this new work, incorporating, as it will,

the later developments which it has witnessed. It is a book to which all interested in insurance and shipping will look forward with eager expectancy.

Concealment of Material Facts.

THE CASE of *Hands* v. *Simpson Fawcett & Co., Ltd.* (*Times*, 9th February, 1928), is a case in which an attempt was made, unsuccessfully, to apply the principle of contracts *uberrimæ fidei* to contracts of employment. There it was sought to avoid a contract for the employment of a person as a commercial traveller on the ground of non-disclosure by the employee of the fact that he had previously been convicted of motoring offences. It is a general principle of law that a contract cannot be avoided by reason of non-disclosure of facts, which might have influenced the mind of the other contracting party, unless the non-disclosure can be regarded as amounting to a fraud and thereby giving the other contracting party the right at his option to rescind. To this rule, however, there are various exceptions, as, for example in the case of contracts for suretyship and insurance.

In holding in *Hands* v. *Fawcett* that the contract of employment was not to be regarded as a contract *uberrimæ fidei* and as such voidable on the ground of non-disclosure of material facts, Mr. Justice FINLAY applied the principle laid down previously in *Fletcher* v. *Krell*, 1872, 42 L.J. Q.B. 55, where it was held that the engagement of a governess who had described herself as a spinster could not be terminated in the absence of fraud on discovery and by reason of the fact that she had previously been married, and that such marriage had been dissolved, cf. also *Baker* v. *Cartwright*, 10 C.B.N.S. 124, where, in an action for breach of promise, the fact that the defendant was at the time of the promise unaware that the plaintiff had at one time been insane, was held to be no answer to the action.

Right to Discharge Traveller.

A FURTHER point arose in *Hands* v. *Simpson Fawcett*, viz.: whether the employment of the traveller could be terminated on the ground of his conviction, subsequent to his engagement, of a motoring offence, and the suspension of his driving licence, it being argued on behalf of the employers that it was an essential part of the traveller's duty to travel in a car supplied by them. Mr. Justice FINLAY considered, however, that it was not part of the contract in question that the car should be driven by the traveller personally, and that inasmuch as during the suspension of his licence it was open to him to engage or procure some other person to drive the car, there was nothing to show that he had put it out of his power to perform his duties, so that the employers were not entitled to terminate the employment on that ground.

Master and Servant.

THE LAW relating to the liability of the master for the acts of his servant has been so exhaustively dealt with, and applied to so great a variety of facts, that there would appear to be little difficulty in recognising the principle applicable to new and unusual facts. In the case of *Britt* v. *Galmoye and Nevill*, 72 SOL. J. p. 122, however, before Mr. Justice SHEARMAN, an attempt was made to extend a master's liability to the case of an accident caused by the fault of his servant to whom he had lent his motor-car in the following circumstances. The master, a contractor, employed the servant as a vanman, and was on very friendly terms with him. At his own request the servant was allowed the use of his master's private car, after working hours, for the purpose of taking two friends to the theatre. When driving home afterwards he injured the plaintiff by colliding with a protected trestle on which the plaintiff was standing while painting the under-side of a bridge. It is difficult to appreciate on what possible grounds the owner of the car in these circumstances could have been made liable. The law in the various authorities on the subject may perhaps be best summarised as found in "Baldwin's Edition of Bouvier's Law Dictionary," at p. 765: "The master is answerable for every such wrong of the servant or agent as is committed by him in the course of the service and for the master's benefit, though no express command or privity of the master be proved." Mr. Justice SHEARMAN was of the opinion that in the present case the servant, after his work was finished, was in the position of a stranger to his master, and accordingly found in favour of the defendant GALMOYE, with costs. NEVILL, the co-defendant, was the driver of the motor-car, and against him the plaintiff was entitled to judgment.

Injunction to Restrain Proceedings in Foreign Court.

THE DECISION of the Court of Appeal in *Ellerman Lines* v. *Read and Others* (*The Times*, 1st inst.), affirms an important principle with regard to the *quasi* extra-territorial jurisdiction of an English court to grant an injunction to restrain a person from taking proceedings in a foreign court. In that case the defendants had committed a breach of contract and had by fraud obtained a judgment in the Turkish courts against the plaintiffs, and the point in issue before the Court of Appeal was whether the plaintiffs were entitled to an injunction to restrain the defendants from enforcing the Turkish judgment. In the court below, Mr. Justice MACKINNON declined to grant the injunction as it was to take effect outside the jurisdiction. The Court of Appeal, however, reversed the decision of the learned judge and held that the court had power to grant the injunction, Lord Justice SCRUTTON pointing out that the contract was an English one, considerable portions of which were to be performed here, and that the contract had moreover been broken by a British subject, though it would appear that this latter factor is immaterial. That our courts have jurisdiction to grant such injunctions, so long as the person on whom process is to be served has either appeared or is within the jurisdiction, is clear if it is borne in mind that the injunction is not intended to and cannot indeed restrain the foreign court, but operates in *personam* against the person seeking to take or enforce proceedings in such foreign court. The principle which was applied by the Court of Appeal in *Ellerman Lines* v. *Read* will be found very clearly stated in the judgment of Lord BROUGHAM in *Lord Portarlington* v. *Soulby*, 1834, 3 My. & K. 104, 108, where the learned judge said that this jurisdiction was "grounded . . . not upon any pretension to the exercise of judicial and administrative rights abroad, but on the circumstances of the party on whom the order is made being within the power of the court." . . . "If," added Lord BROUGHAM, "the court can command him to bring home goods from abroad or to assign chattel interests, or to convey real property locally situate abroad; if, for instance, as in *Penn* v. *Lord Baltimore*, 1 Ves. Sen. 444, it can decree the performance of any agreement touching the boundary of a province in North America, or as in the case of *Toller* v. *Carteret*, 2 Vern. 494, can foreclose a mortgage in the Isle of Sark . . . in precisely the like manner it can restrain the party being within the limits of its jurisdiction from doing anything abroad, whether the thing forbidden be a conveyance or other act *in pais*, or the institution or prosecution of an action in a foreign court."

The concluding words of the above paragraph, indeed, appear to cover the very case which was in point in *Ellerman Lines* v. *Read*.

Coroners' Juries and their Verdicts.

IN THE course of his summing up at a recent inquest in the City of London, the Coroner, Dr. WALDO, dealt with a point of great practical interest and importance to drivers of vehicles. In the case in question it appeared that a boy had been run over by a motor omnibus in Bishopsgate, the evidence

showing that the boy was sitting on the top of a box tricycle that was being driven by a fellow worker who, in consequence of having no clear view, collided with a stationary barrow, with the result that the cycle was overturned, the deceased was pitched off in front of the omnibus, the wheel of which going over him. Dr. WALDO pointed out that gross negligence or manslaughter by neglect was the only kind of neglect into which the jury had to inquire. Purely civil neglect, which might be made the subject of an action for damages, was a question entirely outside the function of the jury, but he told them that if they chose they could add a rider—which, however, would be without legal effect—exonerating the driver from all blame. Such a course might, he said, assist the driver if at any time afterwards he applied for another situation, and it would, furthermore, help him to forget the misfortune of having, albeit unwittingly and without blame, brought about the death of a human being. In the case in question the jury, as was to be expected in the circumstances, did in fact exonerate the driver from blame, but it seems that there is a very general misconception that if this is not done in terms a person in the like unfortunate position as the driver in that case does not emerge entirely scatheless from the inquest. Such a misconception is the more to be deprecated because, as Dr. WALDO pointed out, a verdict of accidental death in itself implies that the driver is exonerated, at all events from criminal neglect. An exonerating rider may be without legal effect, but it nevertheless has a very real consolatory effect on the mind of the person whose conduct has been the subject of investigation.

Alimony *pendente lite.*

IN HIS judgment in the case of *M., E.M.* v. *M., W.N.*, on the 6th ult. (*The Times*, 7th January), Lord MERRIVALE described the granting of alimony *pendente lite* as a privileged procedure limited by the necessities of the case, and not the exercise of a substantive right such as gave a cause of action. In the case in question a wife petitioner in a suit for judicial separation, after filing the petition in March, 1927, sought an order for alimony *pendente lite*. A decree for judicial separation was made in November, 1927, but owing to delay in the interlocutory proceedings the application for alimony *pendente lite* was not heard by the registrar until ten weeks after the decree for judicial separation had been obtained, and it was then refused. The wife appealed. His Lordship, dismissing the application, said that interlocutory processes for alimony and costs were coercive means of securing that the wife should be heard in the cause; the necessity ceased when the decree was granted. The rigid adherence to the principle so expressed may conceivably result in some hardship to an applicant in such circumstances as the present. In the absence of immediate alimony *pendente lite*, a wife might successfully press her action by borrowing to overcome her financial difficulties, intending to repay from the alimony *pendente lite* if and when obtained. Should this eventually be denied her owing to delay over which she had no control, she is penalised for having taken steps herself to secure what the law itself desires and provides for, namely, that she should have an opportunity of being heard.

The Protest of a Witness on Subpœna.

IF A LONDON newspaper has correctly reported certain proceedings before Mr. Justice HORRIDGE, it is extremely difficult to reconcile his rulings with established practice. A witness, attending on subpœna served on behalf of the plaintiff in a civil action, complained that he originally received only two shillings, and, on remonstrance, another two shillings, making four shillings in all for four days' attendance—a sum which, he stated, no doubt truthfully, would not even keep down his office expenses for that length of time. He therefore prayed the judge that his proper expenses should be paid to him before he testified. He is reported to have been told by the learned judge to testify or go to prison. The right of a professional witness, even when sworn, to refuse to testify until he had received compensation for loss of time and full first-class fare for his return journey, was established In *Re Working Men's Mutual Society*, 1882, 21 C.D. 831, where the witness was an auctioneer, and had been tendered two guineas. On motion to commit him for contempt, his return first-class fare from Andover being £1 0s. 3d., KAY, J., held that he had not been tendered sufficient money and refused accordingly. He also stated that he had the concurrence of a Master of the King's Bench in this course, so that the practice of the two Divisions should be uniform. Probably, however, the witness before Mr. Justice HORRIDGE was not a professional man, and his journey may have been a short one. Nevertheless, in the "Table of Allowances to Witnesses" compiled so long ago as 1853, and printed in the A.P., 1928, p. 1783, and the "Yearly Practice," 1927, vol. ii, p. 2470, the lowest payment to a labourer, resident in the town where the cause is tried, is 5s., and four days of the time of a witness who possessed an office would certainly be an *a fortiori* case. The principles on which a witness should be paid was discussed in "*The Ibis*," 1921, P. 215—a curious case, for, whereas the chief engineer, paid a salary, originally received 17s. 6d., a deck hand, paid by the catch, was allowed £1. It was held, however, that a witness was not bound to receive the exact sum he could prove he had lost by his absence from work, but reasonable compensation, and the case was remitted accordingly. In the A.P., 1928, p. 1782, it is stated that, although the 1853 table is no longer binding, "a somewhat more liberal scale of allowances is usually adopted in both divisions"—a conclusion normally to be expected from the depreciation of the value of money. It is rare for a judge to threaten a witness with imprisonment, and the report leaves the problem of why Mr. Justice HORRIDGE took this course unsolved.

Libel on Corporation.

IT WAS THURLOW, L.C., who said that corporations had no bodies to be kicked nor souls to be damned. But COKE had long previously anticipated the statement in the *Sutton's Hospital Case*, 10 Rep. 32, where he said that they (corporations) cannot commit treason nor be outlawed nor excommunicated, for they have no souls. From which it would appear that from a purely legal point of view the want of a soul is not altogether an unmixed evil and has certain advantages. The position of corporations is, however, becoming more and more assimilated to that of the individual, and no doubt ere long there will be little or no difference between them. That however, is not quite the case at present, as we are reminded by a recent case dealing with the right of a corporation to sue for libel. The law on that point is not quite clear, but it may be stated quite shortly for the present purpose as being that a corporation cannot sue for libel affecting its personal reputation only and not its trade or business, and cannot pay the costs of a prosecution for libel out of its assets. In *Stepney Guardians* v. *Locks*, *Times*, 4th inst., where the plaintiffs moved for an injunction to restrain the defendant from publishing an alleged libel on them, the defendant contended that the action was wrongly constituted and that the plaintiffs as a corporation had no right of action in respect of the alleged libel attacking their credit and reputation. CLAUSON, J., said the jurisdiction to restrain the repetition of a libel pending the hearing must be exercised with the utmost care, as the court should leave the question of libel or no libel to be determined by a jury. The point that the plaintiffs were a corporation, not a trading corporation, and could not sue as such for libel would have to be decided at the proper time. He expressed no opinion on it, but granted the injunction. From which it can be inferred that there may still be cases in which a corporation can neither sue nor be sued like an ordinary person.

Railway Companies as Common Carriers.

On Friday, the 27th ult., Mr. W. Valentine Ball, O.B.E. (a Master of the Supreme Court), delivered the following lecture on the above subject at the London School of Economics (University of London), when the chair was taken by Sir Lynden Macassey, K.C.

Master Ball said:—It may be asked at the outset: Why is it necessary to consider the position of a railway company as a common carrier? The answer to that question is to be found in this: That every public Act of Parliament affecting railways passed during the last 100 years (except the Act of 1921), has expressly recognised that railway companies may be subject to the law relating to common carriers. And so it comes about that certain old doctrines of the common law of England—doctrines the origin of which is well nigh lost in the mist of antiquity—are still applied to modern transport in all its varied forms. For the law relating to common carriers is essentially part of our common law, although it has been modified by statute in divers respects and in important particulars, to which I shall presently advert.

Who, then, is a common carrier? What are his duties and responsibilities? Importance attaches to the word "common," which is part of his title; for there is a vital distinction between an "ordinary" and a "common" carrier.

A common carrier is one who holds himself out to convey goods for all and sundry. He may be a carrier of all goods or of one or more classes of goods. He may be a carrier between one or more towns or places or he may be a carrier who proposes to carry goods from any one place to any other. I suppose Messrs. Pickford or Carter Paterson might properly be described—and would not be offended if they were described—as universal common carriers. Your common carrier may limit his profession by any means which occur to him, as for instance, by posting a notice in his receiving office to the effect that he is not a common carrier of coal, or lime, or to the effect that he will only carry from London to Birmingham and places intermediate between those two towns.

The common carrier is bound to carry for all and sundry at reasonable rates. If he does not do so, he is likely to have an action brought against him; and it was laid down more than a century ago, that a common carrier refusing to carry might be indicted as for a misdemeanour! The use of such a drastic remedy has, however, fallen into abeyance. If a common carrier at the present time were to refuse to carry my goods at a reasonable rate, it would be open to me to offer what was reasonable, pay what was demanded under protest, and then sue to recover the difference.

But there is something else which distinguishes the legal liability of a "common" from that of an ordinary carrier. By the term "ordinary carrier" I mean one who carries subject to the terms of a special contract, as for example, a furniture remover. Such a carrier is liable for negligence, whereas the common carrier is virtually an insurer of the goods which are in his custody. He is liable to the owner if goods are lost, stolen, injured, or destroyed by fire; liable, that is, to replace or pay the value of the goods if they are wholly lost or destroyed; liable to pay for any damage which has been done to them. To this rule there is one notable exception. The common carrier is not liable for damage occasioned by the Act of God or the King's enemies; nor is he responsible for any damage which is due to inherent vice in the thing carried. The Act of God is a phrase somewhat difficult to define. It may, however, be said to mean something of an unusual character as a great flood which overwhelms the carrier's cart, or a flash of lightning or an exceptionally heavy fall of snow. If a carrier had been overwhelmed in a snowdrift when crossing Salisbury Plain late on Christmas Day, 1927, I think he might well be said to have met with a disaster due to the Act of God. But for the normal inclemency of the weather the common carrier can be held responsible. As to the phrase "The King's enemies," this must be strictly construed. It does not include riot or civil commotion. The carrier is liable if his vehicle is upset and rifled by a mob.

But even in the case where loss or injury has been sustained owing to the Act of God or the King's enemies it may be that the carrier can still be held liable. He must not negligently or recklessly run into danger. He must not, for example, start out on his journey when he knows the road is flooded, and it was held during the war that when a carrier by sea, defying Admiralty regulations, deliberately chose an ocean route infested by the enemy submarines, he could not escape liability by saying that his ship was sunk by the King's enemies.

With regard to "inherent vice" in the thing carried, this alludes to something which renders an article liable to be injured by the normal treatment which is given to it on a journey. Goods not properly packed, for example, may get broken. Certain articles, such as fruit, may perish or decay in the ordinary course of transit. For such damage the common carrier is not responsible.

To the rule that the common carrier *must* accept goods for carriage there are certain obvious exceptions. He need not undertake the duty if—

(i) He is not ready to start on his journey;

(ii) The goods are dangerous or not properly packed;

(iii) The consignor is not ready and willing to pay the carriage if demanded;

(iv) He has no room in his vehicle.

With regard to freight, I ought perhaps to mention that the common carrier is entitled to exact payment in advance, and if no payment has been made, he has a lien on goods which have been carried.

Having thus briefly stated the law, it may be interesting to explain *why* the common carrier is subject to such a heavy burden of responsibility. It is for this reason: He, and he alone, has possession and custody of the goods during the transit. The owner has lost control of them. It thus came about that the common carrier was made an insurer of goods by Roman law. The same principle was adopted by English judges from the dawn of our history. It may seem hard that the common carrier must insure against loss by theft; but in theory he ought to have sufficient guard to ward off an attack by highwaymen, and in some of the old books one finds the statement that he was made liable for the depredations of robbers, lest by chance he be colluding with the thieves.

I have stated what the law of England was prior to the year 1830. Unless protected by the terms of special contract, the common carrier, until that year, was subject to all the liabilities which I have endeavoured to summarise. But as commerce extended and demands for the services of carriers began to multiply, a twofold agitation arose. The carriers, many of whom were mail coach proprietors, began to complain of the heavy liabilities to which they were exposed in the carriage of valuable articles, e.g., bullion, jewels, etc. The public, on the other hand, began to protest against the methods by which carriers, who had obtained a virtual monopoly along certain routes, limited their liability by posting notices in their receiving offices and elsewhere—notices the purport of which was seldom known to the consignor until it was too late. The time came for Parliament to intervene, and in the result the Carriers Act of 1830 was passed.

But before I deal with that measure I ought to point out that notwithstanding the lapse of years, the old common law rules, save in so far as they have been modified by the Act of 1830, still apply to common carriers, and subject to what I shall have to say about the Act of 1921, they still apply to railway companies. Broadly speaking, it may be said that all goods carried by rail upon the terms of an ordinary old form of company's risk consignment note, were carried by the railway company, subject to all the liabilities of common carriers.

The " general conditions " which were and are to be found on the back of such a note relate for the most part to liability before or after transit and do not cut down or modify the liability of the company at common law.

Yet, as we have seen, these rules of law were formulated and established long before carriage by rail was invented. But the railway train is only the modern equivalent of the old stage coach which carried passengers and their luggage. We still talk of the " booking office." Every train has its " driver," who holds the throttle instead of the reins. Every train has its guard, although he does not carry a blunderbuss—the weapon which was used when highwaymen attacked the mail coach on Hounslow Heath. Just as the stage coach proprietor was insurer of the passengers' luggage carried in the " boot," so the railway company insures the luggage of passengers which is carried in the van.

The Carriers Act of 1830, however, modified the liability of the common carrier in certain important particulars. It began by reciting the evils which it was intended to redress, setting forth that common carriers had been exposed to great risks owing to their having to carry articles of great value in small compass enclosed in parcels, of the contents of which they had no knowledge. It also emphasised the fact that common carriers were enabled and had been wont to cut down their liabilities by means which were deemed to be unfair to the public, e.g., by posting notices in booking offices and other places to the effect that they would only accept the risks of common carriers on certain terms. It then proceeded to declare that as regards certain articles worth more than £10, enclosed in a parcel or package, the common carrier for reward should only be liable as such if the nature and value of the contents of the package was declared by the passenger, and an extra charge paid or promised if demanded by the carrier. The list of articles is set forth in the Act. In the main they are articles of great value in small compass. The list is familiar to everyone, and in particular to all those who are listening to me, as it is posted up in every railway station in the kingdom, and *mirabile dictu* notwithstanding the lapse of time has scarcely been modified since 1830. It is to be noted that as regards such articles, the carrier is not liable *at all* unless the declaration is made—not even up to the value of £10. Further, as regards value, the carrier is not concluded by the price which the consignor chooses to put on his property. A watch might be sent in a parcel which the consignor said was worth £9, yet the carrier might say, " Nay, it was worth £20 and should have been declared. Therefore, I am not liable at all." On the other hand, the carrier might say to a consignor : " This picture, which you declared was worth £1,000, was a fake only worth 10s., and my liability is limited to that sum."

So far as the public is concerned, this Act affords protection by providing that the carrier must post a notice setting forth the terms upon which the specified articles will be carried. Otherwise he can make no extra charge. Further, the Act expressly declares that no common carrier may limit his liability in respect of any article carried by him merely by posting up a notice. It may be mentioned, too, that to the rule that a common carrier is not to be held liable in respect of undeclared articles, there is this exception : he is and remains liable for theft and other felony committed by his own servants.

There have been many discussions in the courts as to whether particular articles do or do not come within the definition of the goods specified in the Act. I do not propose to refer to them. Suffice it that the list has remained practically unaltered for 100 years. Nor has the Act itself been modified until 1921. It was then amended in two very important particulars by the Railways Act of that year. It was made to apply, as from the appointed day, to carriers " partly by land and partly by sea," while so far as railway companies are concerned, the figure £10 which appears in the Act as the value below which articles need not be declared, was raised to £25. In other words, as from 1st January, 1928, a parcel of jewellery worth £24 10s. need not be declared. The railway company, accepting such a parcel for conveyance as a common carrier, accepts it subject to all the responsibilities of an insurer. Yet, if such a parcel be tendered for conveyance by a common carrier, other than a railway company, e.g., one of the many motor transport companies which have recently come into existence, a declaration could be insisted upon, for, in such a case, the limit of £10 still applies.

I am wholly unable to explain why this added burden was imposed upon the railway companies. The fact that no declaration need be made may possibly have effect to encourage people to consign by rail rather than by road ; but " rate cutting " may enable the competitors of the railway companies to overcome that difficulty. The plain fact emerges, however, that in their capacity as common carriers the dice have been loaded against the railway companies in the game which they have to play, with ever increasing difficulty, against their competitors by road.

To return for a moment to the Carriers Act. It expressly provides that it must not be construed so as to prevent a carrier limiting his liability—even in respect of the specified articles—by special contract with the consignor. If a special contract is made, whether by word of mouth or by writing, the consignor is bound by it ; and prior to the Railway and Canal Traffic Act, 1854, such a contract was binding, howsoever unreasonable its terms.

The fact that, notwithstanding the Carriers Act, it was still competent for the common carrier to limit his liability called for the intervention of the Legislation. It was pointed out that railway companies had secured a virtual monopoly of the carrying trade ; that they were under no obligation to carry at all, and that by insisting on the execution of a special contract they were able to escape liability for every kind of loss—including loss, injury or damage caused by the gross negligence or even theft of their own servants.

Once again Parliament intervened.

The various private Acts of Parliament by which the railway companies exercised their powers were enabling only ; that is to say, the companies were allowed but not compelled to carry goods and passengers and their luggage. It is true that by an Act passed in 1845 they were prevented from showing undue preference ; but it was not until 1854 that an obligation to carry for all and sundry was imposed. By the Railway and Canal Traffic Act of that year it was provided that every railway company should, according to its powers, convey goods and passengers and their luggage upon reasonable terms, and that no contract by which a company sought to limit its liability for negligence should be valid unless (*a*) its terms were reasonable, and (*b*) it was put into writing and signed by the consignor.

It is not necessary for me to dwell at length upon the terms of this Act ; but it is important to notice that it did not in any way compel the railway companies to carry any goods subject to the liabilities of a common carrier. Notwithstanding that Act, it was still competent for any railway company to give notice that it was not, and would not be, a common carrier of any specified article or class of articles. Broadly speaking, however, after that Act came into force all goods carried by the railway company at " ordinary rates " were and have been carried by them as common carriers, whereas all goods carried by them at " owners' risk " were and are not so carried.

This was the condition of affairs down to the time when the Act of 1921 came into operation. Before discussing the effect of that Act, however, it is necessary to consider the position of a railway company in regard to (*a*) passengers ; (*b*) animals ; and (*c*) passengers' luggage.

With regard to passengers, there has never been such a person as a common carrier of persons. It is true that there are *dicta* in certain judgments to the effect that there is no

reason why a carrier should not be an insurer of his passengers just as he is an insurer of the goods in his vehicle. In point of fact, however, there is no case in which this heavy liability has ever been imposed. As regards the passenger, the carrier is only liable for negligence, and this is the position of the railway company. In regard to animals, too, there never has been such a person as a common carrier. This is said to be due to the fact that your common carrier came into existence in bygone centuries when cattle were driven to market: when the services of a carrier were not required. Even geese and turkeys used to be driven along the highway in the old days! Railway companies are careful to emphasise the fact that they are not common carriers of animals by stating at the head of consignment notes that "they are not and will not be common carriers of live stock."

In regard to luggage, it is clear that luggage—that is to say, the articles which the passenger takes with him on his journey—is conveyed by a railway company subject to all the liabilities of a common carrier. Further, as it is carried "for reward"—part of the fare paid being attributable to the luggage—luggage is subject to the provisions of the Carriers Act. If it contains any of the articles enumerated in the Act, they must be declared. Few railway passengers know this; fewer still ever make any declaration. They only become aware of the existence of the Carriers Act when they seek to enforce a claim against a railway company in respect of a loss.

Numerous problems have arisen in relation to passengers' luggage. Such questions as these: "What is luggage?" "Is the railway company liable for the loss of luggage carried elsewhere than in the van?" "Must luggage be the property of the passenger?"

What is luggage? This is a question of fact. The test to be applied was laid down in the case of *Macrow* v. *Great Western Railway*, where Lord COCKBURN said: "The conveyance of the personal luggage of the passenger being obviously for his convenience, and, therefore, accessory, as it were, to his conveyance, it may be thought that the liability of the passenger, in respect of the safe conveyance of the passenger's luggage, should have been co-extensive only with the liability in respect of the safety of the passenger. The law, however, is not too firmly settled to admit of being shaken; that the liability of common carriers, in respect of articles carried as passenger's luggage, is that of carriers of goods as distinguished from that of carriers of passengers. On the other hand, the obligation of a railway company, or other carrier of passengers, to the luggage of a passenger, being limited to personal luggage, it follows that it is only in respect of what properly falls under the denomination of personal luggage, or has been accepted by the carrier as such, that the liability to carry safely, irrespectively of negligence, attaches. . . . The difficulty in the present case, as it has been in many others, is to determine what properly comes under the description of ordinary personal luggage. . . . We hold the true rule to be that whatever the passenger takes with him for his personal use or convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities, or the ultimate purpose of his journey, must be considered as personal luggage. This would include, not only all articles of apparel, whether for use or ornament, but also the gun case or fishing apparatus of the sportsman, the easel of the artist on a sketching tour, or the books of the student, and other articles of analogous character, the use of which is personal to the traveller, and the taking of which has arisen from the fact of his journey. On the other hand, the term 'ordinary luggage' being thus confined to that which is personal to the passenger and carried for his usé or convenience, it follows that what is carried for the purposes of business, such as merchandise or the like, or for larger or ulterior purposes, such as articles of furniture or household goods, would not come within the description of ordinary luggage, unless accepted as such by the carrier. The articles as to which the question in the present case arises consisted of bedding. Now, though we are far from saying that a pair of sheets or the like, taken by a passenger for his own use on a journey, might not fairly be considered as personal luggage, it appears to us that a quantity of articles of this description intended, not for the use of the traveller on his journey, but for the use of his household when permanently settled, cannot be held to be so."

But it is obvious that the meaning of the word must vary according to the needs of the times and the habits of the travelling public; and it is one of the merits of our English system of case law that it is left for the courts to decide what is luggage in view of the circumstances. Were a comprehensive table or schedule compiled this year, it would be out of date in a few years' time. I do not propose to discuss it further.

There is another question which has given rise to difficulty. The passenger may take some of his luggage with him in the compartment or have it labelled and placed in the van. Is the railway company liable as a common carrier, irrespective of the question whether the passenger has retained control of it during the journey or not? This, too, is a question for the courts to decide. In an old case, a man who had his valise with him in the compartment, left the train at Swindon to get a cup of tea at the refreshment room. When he returned his valise had disappeared. It was held that the company were not liable, the passenger having retained control. That decision has always appeared to me to accord with good sense: "a fool and his luggage are soon parted!" But there seems to be a tendency to enlarge the responsibility of railway companies in respect of luggage not placed in the van. A case heard last year (*Vosper* v. *Great Western Railway*) affords a good illustration. There the plaintiff who had a third-class ticket gave his bag to a porter telling him to put it in a first-class compartment, which the porter did. Subsequently the plaintiff met some friends who persuaded him to join them in the restaurant car, where, apparently, he remained for the rest of the journey. When he arrived at his destination he could not find his bag, and he sued the railway company for its value. A county court judge held that the *onus* was on the company to prove that the plaintiff had been guilty of negligence which led to the loss of the bag; that they had not discharged that *onus*, and that therefore the company were liable as common carriers. In the Court of Appeal it was pointed out that the plaintiff had done nothing which was not usually done by those who travel in corridor trains, and that the court was not bound to draw inference adverse to the plaintiff from the fact that he had directed the porter to put his bag in a first-class compartment although he had only a third-class ticket.

Pressed to its logical conclusion, this decision appears to me to abolish the distinction which used to be drawn between "luggage in the van" and "luggage in the compartment"; to abolish it, that is to say, when it is a corridor train. It seems to place the burdens of a common carrier upon the railway company in respect of all luggage, wheresoever carried in a train, when there is communication between one compartment and another.

Yet the railway company has one loophole of escape when sought to be made responsible for the loss of luggage. It may be proved that the luggage was not the property of the passenger. Brown may ask Jones, who is travelling from London to Newcastle, to take a bag for him, passing it off as his own luggage. This practice is resorted to often enough in fraud—for it is a fraud—on the railway company. But if Brown's bag is lost, neither Brown nor Jones can make any claim against the company. Brown because he was not the passenger; Jones because it was not his luggage which was lost.

I have said that the Carriers Act is and remains in force. This was recognised in 1854, when the following proviso was added to s. 7: "Nothing herein contained shall alter or affect

the rights, privileges or liabilities of any such company under the Carriers Act, 1830, with respect to articles of the descriptions mentioned in the said Act."

I now come to the Act of 1921, and propose to consider the changes which have resulted from it.

The Act provides, by s. 42, that certain conditions shall be formulated, including company's and owner's risk conditions, and conditions on and subject to which damageable goods shall be carried. These conditions are to be formulated by the companies and submitted to and approved by the Rates Tribunal. Then, by s. 43 (2): "When the terms and conditions so settled come into force they shall be standard terms and conditions of carriage of all railway companies and shall be deemed to be reasonable."

Section 44 of the Railways Act, 1921, provides as follows:—

"(1) On and after the date so fixed as aforesaid the terms and conditions to which merchandise is apart from special contract to be carried by a railway company shall be company's risk conditions, and those conditions shall apply without any special contract in writing to the carriage of merchandise at ordinary rates:

"Provided that, in any case where an owner's risk rate is in operation and the company has been requested in writing to carry at that rate, the terms and conditions upon and subject to which such goods shall be carried shall be owner's risk conditions.

"(2) The terms and conditions upon and subject to which damageable goods not properly protected by packing (if accepted by the company for carriage) shall be carried by a railway company shall be the conditions settled by the Rates Tribunal as aforesaid, but the company shall not be under any obligation to carry damageable goods not properly protected by packing.

"(3) Subject to the provisions of the Railway and Canal Traffic Acts, 1854 and 1888, nothing in this Act shall preclude a company and a trader from agreeing in writing to any terms and conditions they think fit for the carriage of merchandise, live stock and damageable goods not properly protected by packing, or dangerous goods."

The effect of this section is said in "Macnamara's Law of Carriage" to be as follows:—

On and after a date to be fixed by the Rates Tribunal—

(1) Except as to damageable goods not properly protected by packing and dangerous goods (as to which last see s. 50 of the Act) all merchandise will, and must be carried, unless otherwise arranged, at the company's risk standard conditions.

(2) Where an owner's risk rate is in operation, the trader, on making a request in writing, may have his goods carried at the owner's risk standard conditions. No special contract need be signed in this case.

(3) It is still to be open to a railway company and a trader to contract outside the standard conditions as to the carriage of any kind of merchandise (including damageable goods not properly packed and of live stock), subject to the provisions of the Railway and Canal Traffic Acts, 1854 and 1888.

While it is probable that in future traffic will be consigned in most cases under the standard conditions, the option given by s. 44 (3) of the Act to the parties to make their own contract makes it necessary to bear in mind the old law on the subject.

It is important to notice that the railway company *must* carry on these standard terms unless there is an agreement to the contrary. Another remarkable fact is that the Act of 1921 makes no reference to the Carriers Act, 1830.

Now let me examine the "standard terms" for carriage at company's risk in order to see whether they are or are not more onerous than those upon which goods are conveyed by a common carrier.

Conditions 1 and 2 relate to labelling, addressing, etc.

Condition 3 is as follows:—

The company shall, subject to these conditions, be liable for any loss, or mis-delivery or damage to merchandise, occasioned during transit, as defined by these conditions, unless the company shall prove that such loss, misdelivery, or damage has arisen from:—

(*a*) Act of God.

(*b*) Act of war or of the King's enemies.

(*c*) Arrest or restraint of Princes, or Rulers, or seizure under legal process.

(*d*) Orders or restrictions imposed by the Government or any department thereof.

(*e*) Act or omission of the trader, his servant, or agent.

(*f*) Inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice, or natural deterioration of the merchandise; or

(*g*) Casualty (including fire or explosion).

Provided that:—

(1) Where loss, misdelivery or damage arises and the company have failed to prove that they used all reasonable foresight and care in the carriage of the merchandise, the company shall not be relieved from liability for such loss, misdelivery or damage.

(2) The company shall not incur liability of any kind in respect of merchandise where there has been fraud on the part of the trader.

With regard to the exceptions included in paragraphs (*a*) to (*g*), it is plain that these make the railway company liable to a less degree than the common carrier. While there may be some doubt as to whether a common carrier would be liable if goods were seized under legal process, it is certain that a common carrier is liable for damage caused by fire or explosion. To this extent, then, the railway company carrying on the new terms is relieved. But observe the two provisoes: the first of them makes it plain that even if loss or damage is due to one or other of the causes mentioned in the clause, the *onus* will be upon the railway company to prove it was not negligent.

Condition 4, which relates to delay, provides that: "The company shall, subject to these conditions, be liable for loss proved by the trader to have been caused by delay to, or detention of, or unreasonable deviation in the carriage of merchandise, unless the company prove that such delay or detention, or unreasonable deviation, has arisen without negligence on the part of the company or their servants."

Here, too, the law has been varied. A common carrier is not an insurer against delay. Now, if there is delay, the company must prove it was not due to their negligence.

Condition 5 shows that it was unnecessary to refer to the Carriers Act, 1830, in the Act of 1921, for it provides that: "The company shall not, whether the carriage be by land or water, or partly by land and partly by water, be liable for loss or injury (from whatever cause arising) of or to any articles or property described in the Carriers Act, 1830, as amended by subsequent Acts, contained in any parcel or package, when the value of such articles or property exceeds £25, unless the nature and value thereof be declared on delivery to the company for carriage and an increased charge over and above the charge for carriage at company's risk rates be paid for the greater risk incurred, or an undertaking to pay such increased charge be accepted."

How, then, does the Act of 1921 affect the status of the railway company as a common carrier? While it provides that a company must carry at standard rates (unless there is a special agreement) it does not limit the right of a railway company to say: "We are not common carriers."

One very extraordinary point arises in relation to Condition 5. To a large extent it incorporates the Carriers Act, 1830, *but* it absolves the company from loss "from whatever cause arising."

Now, as we have already seen, a common carrier remains liable under the Act of 1830 where loss has been occasioned by the theft of his servant. It is reasonably clear, however, that under Condition 5, theft by a servant would be included in the words "any cause arising."

Has the Rates Tribunal either expressly or impliedly repealed a section of the Carriers Act so far as it affects railways? If it has, has it power to do so? These are questions which are bound to arise in the future, for we are now confronted with this rather astonishing fact that whereas in the case of articles carried by a railway company on standard terms the company is not liable for theft by a servant, the company is and remains liable for theft by a servant of and from the luggage of a passenger!

I have concluded by drawing attention to one of the many problems which may arise in relation to the new position of railway companies as common carriers. Doubtless there are several others.

Finance Act, 1927:

Income Tax, Super-Tax, and Sur-Tax.

By H. ARNOLD WOOLLEY, Solicitor.
(*Author of "A Handbook on the Death Duties."*)

In view of the obscurity (which appears to be chronic) of the language employed in the Finance Acts, and the difficulty in which the busy practitioner is placed when confronted with the task of unravelling them, it is hoped that the following brief remarks on the principal changes made by Pts. II and III of the Finance Act, 1927, may be of some assistance.

The aim is to draw attention shortly to the changes which appear to the writer to be of most general importance from the solicitor's standpoint, and are as follows:—

PART II OF THE ACT.

Section 21.—Schedule A tax (Landlord's Property Tax), which has for some years been payable in two instalments, is to be payable for 1927/28 onwards in one instalment, on the 1st January (except in respect of income falling to be treated as "Earned income," e.g., rent payable to a clergyman as part of his stipend), instead of one-half being postponed to 1st July next. This is, undoubtedly, a hardship upon lessors, especially where the property is in mortgage and they have to pay half a year's interest early in the year. For instance, A has leased a house to B at £200, per annum, payable quarterly; the net assessment is £200, and the tax consequently is £40, all payable by the lessee on 1st January.

B pays the tax in January and then pays A his December quarter's rent of £50, less the £40, viz., £10. A has mortgaged the house for £2,000, and has to find half a year's interest. All he has got to pay it with from the property is £10.

Whilst on this subject it may be noted that the lessee must deduct the tax from the *next payment of rent made after he has paid the tax*, or he loses his right to deduct it at all. It is immaterial that the rent became due before the tax was due or was paid; if the Christmas rent is not in fact paid until after the Sched. A tax is paid the tax can (and must) be deducted from it.

The lessee must produce his receipt for the tax to the lessor if so required (Finance Act, 1926, s. 26) *

Section 24 is important to solicitors to charities. Any charity engaged in trading is exempt from tax on profits if they are applied solely to the purpose of the charity, and (1) the trade is exercised in the actual carrying out of the primary object of the charity; *or* (2) the trade is mainly carried on by the beneficiaries of the charity.

Note that (1) and (2) are *alternative*. This provision reverses the effect of certain judicial decisions.

Section 25 provides that tax must be deducted at source by the payers of royalties to owners of copyright, whose usual place of abode is outside the United Kingdom. Seeing that a large number of our novelists and other writers are mainly resident abroad, this provision will be of great importance to publishers, who will have to account to the Revenue for the tax.

Section 26 also deals with deduction of tax from source. Whenever annual interest or any other annual payment is paid out of income not brought into charge for tax, the payer must deduct tax at the standard rate, *and must render an account thereof to the Commissioners*. This would apply particularly to a case where A, having no income available for the purpose, paid interest to B out of capital or where A's income is below the taxable limit. A is constituted tax-collector, and must render the tax to the Revenue. The penalty for default is £100.

Possibly this section was prompted by the case of *Attorney-General* v. *Metropolitan Water Board*, the hearing of which, in the Court of Appeal, is reported in 72 SOL. J., at p. 30.

Section 27 takes a stage further the principle of allowing losses incurred in the year of assessment to be carried forward to following years. The normal rule is that Income Tax is based on each year's income separately, and that a loss in one year cannot be deducted from the following year's income, but statutory enactments have from time to time made exceptions in the cases of trades and businesses. The exceptions have not hitherto extended to profits coming within Case VI of Sched. D, viz., miscellaneous profits other than those comprised in the other five cases of the Schedule. The new section provides that a loss sustained in a transaction which is assessable under Case VI may be set off against profits made in respect of other transactions covered by Case VI in the same year, and if the loss cannot be wholly set off that year the balance may be carried forward to following years up to the sixth following year. But the loss can only be set off against profits assessed under Case VI. This section applies to assessments for 1926-27.

It is impossible to define the classes of profits embraced by Case VI, but in the wording of the Income Tax Act, 1918, they are "Any annual profits or gains not falling under any of the foregoing Cases, and not charged by virtue of any other Schedule."

Case VI seems to catch, amongst other income—

(1) Royalties from patents and copyrights;

(2) Series of speculations in land, stocks and shares, etc.;

(3) Letting a house or apartments furnished, or unfurnished with service added.

It may be remarked that letting unfurnished (without services) is not taxable, the profits being included in the Sched. A assessment on the house, and that the profits from taking boarders are assessable as a business under Cases I or III.

If A makes a loss under one of the above headings he can now set it off against profits arising under the others, but he cannot set it off against any source of income other than Case VI.

Nor can he claim a repayment of tax under s. 34 of the Income Tax Act, 1918, which applies only to losses incurred in any "trade, profession, employment, or vocation."

Section 28 deals with matters arising out of the change in the basis of assessment (to the earnings for the previous year) effected by the Finance Act, 1926.

The object is to prevent hardship arising where the one-year assessment basis results in shutting out losses which would have lessened the assessment if it had been made on a three-year basis.

(*To be continued.*)

* Query whether this only applies, however, to the ordinary case of an occupation lease, and not to a lease at a ground rent, where the lessee is not in occupation. In the latter case the lessee deducts tax at the standard rate from each payment of ground rent, quite irrespective of whether the Sched. A tax has been paid or not, and is not bound to produce a receipt for the tax to the lessor. If the house happens to be unoccupied no Sched. A tax will, of course, be payable (although the ground rent continues to be payable); if, on the other hand, it is occupied, the assessment of the Sched. A tax will be upon the occupier.

An Infant's Contract with a Parent.

In a remarkable case recently before Mr. Justice Rowlatt, a mother sued a son, recently of age, for a sum of £96 as money paid on his behalf for necessaries. The son, training to be a missionary, had in fact given the mother a document, in which he said he agreed to pay her any money she might lend him from his sixteenth birthday until he was self-supporting. Presumably this document was signed before the money was advanced, otherwise there would be a failure of consideration. Our common law, of course, is remarkable for the omission to impose the duty of maintenance and education on either parent. A combination of statutes relating to the poor law and criminal law, however, ensures that a father, or, in his absence, a mother, must maintain children to the age of sixteen: see *Barclay* v. *Forder*, 1868, 3 Q.B. 559. After that age a parent, as such, has no further legal duty to an able-bodied child, but in the higher classes both maintenance and education at the expense of father or mother may be continued until a University degree is taken, long after majority. The almost invariable rule in such cases is that the parent pays without thought of recoupment, though, where there is a marriage settlement, the parent may be aided by an advancement out of the child's capital. In the latter event it is to be noted that the matter is not merely one between the parent and child, but the trustees of the funds must be satisfied that the money taken out of their control is in fact applied for the infant's benefit, though it may in the first place be paid to the parent. Thus there is some safeguard to prevent a parent taking a child's money, and applying it for his or her own purposes. In the case before Mr. Justice Rowlatt, the son, admitting his moral obligation to his mother for her help, pleaded that there was no contract. The judge, in effect, admitted this plea and decided in his favour, expressing the pious hope that, as a missionary, the son would fulfil the moral obligation.

Starting from the assumption that a youth under sixteen cannot be properly equipped and trained for the profession or vocation of a missionary—and the same is true of barrister, solicitor, doctor, clergyman, or any other professional man, unless he attains his ambitions by the road of office-boy—it follows that he requires education and maintenance over that age which must be defrayed otherwise than by his earnings. There is, no doubt, abundant authority that education for a trade or business is a proper subject-matter of a contract, binding an infant, as being for his benefit, see, for example, *Walter* v. *Everard*, 1891, 2 Q.B. 369 (bond on apprenticeship); *Roberts* v. *Gray*, 1913, 1 K.B. 520 (professional billiard-player); and *Mackinlay* v. *Bathurst*, 1919, 36 T.L.R. 31 (vocalist). In each of these cases an infant was successfully sued in respect of a contract for his or her education. In none of them, however, was the plaintiff the parent. The cases then establish the proposition that persons other than the parent may contract to educate an infant, and probably to maintain and educate an infant for a profession or business, and such a contract, if a fair one, will bind the infant as being for his benefit. The question of a loan for education is perhaps a little more doubtful; in one or two cases in America a contract to repay such a loan has been held void for the reason that, although the infant has spent the money for the proper purpose, the lender could not ensure that result, and so the loan was not necessarily for his benefit. A loan of money applied by the lender in education, however, was held binding on the infant, and see also *National Permanent Society, ex parte Williamson*, 1869, L.R. 5 Ch. 309. If, then, an outsider can make such a loan to an infant, what is the position of a parent? In the far more usual case, of course, the parent makes himself or herself responsible to others for the child's education, and not does fix responsibility on one who is regarded in law as in need of the parent's protection. It is conceivable, however, that a parent in straitened circumstances, with a large family, in which one of the elders shows a special talent for some profession needing a long education, might be ready to assist such a child, but could not afford to do so in justice to the others, unless the money spent were replaced. A judge might find a formal bargain between father and son to this effect to the latter's benefit, and a fair one. If so, it is submitted that it would be enforceable. In such a case, however, a heavy burden would be cast upon the parent to prove that the bargain was a beneficial one, and separate advice for the child would be almost indispensable. Moreover, even separate advice would not validate an improvident bargain, see *Powell* v. *Powell*, 1900, 1 Ch. 243. And no doubt the strictest scrutiny would be made where the parent himself undertook the instruction, and trustees should be similarly careful in advancing money which, in effect, is to find its way into the parent's pocket, in teaching his son his own business.

A Conveyancer's Diary.

Representation as respects "Settled Land."

It is clear that the directions issued by the Principal Probate Registrar in consequence of the decisions in *Re Bridgett and Hayes*, 71 Sol. J. 910; 1927, W.N. 275, and *Re Gibbings*, 71 Sol. J. 911, are causing difficulties. There seem to be two reasons for this:—

(1) The directions themselves, as we have already observed and as Mr. Watson has explained at length on p. 8, *ante*, might have been expressed in less ambiguous terms. Thus it is directed that "where settled land *has vested* in a remainderman *absolutely*" a general grant "*not mentioning or including settled land*" will be made without clearing off the trustees of the settled land, "even where there are trustees with power of sale." The expression "settled land" is obviously used in two different senses in the same sentence. In the first place it means land which was settled before the death of the tenant for life but which ceased to be settled on his death. In the second place it means land which on the death of the tenant for life remains settled land.

Again, the words "has vested in a remainderman" involve an ambiguity. They may well mislead those who are familiar with the pre-1926 rule, whereby on the death of the tenant for life the land automatically went to the remainderman without the intervention of a personal representative, into thinking that a legal estate vested in a tenant for life as trustee estate owner becomes automatically vested in a remainderman without any representation. That, of course, is not so. There must be representation—special or general—to effect a transfer of the legal estate in such a case.

The word "absolutely," as Mr. Watson has pointed out (*ante*, p. 8), is improperly (though not without precedent) used in the context; for presumably it refers to trustees for sale as well as to absolute owners, and denotes that there are no family charges which have priority to the absolute interest.

The words "not mentioning or including settled land" presumably mean not expressed in the grant to include "settled land." It is this particular ambiguity which seems to have to some extent caused difficulty to Mr. Walford (see p. 101, *ante*, and Mr. Watson's comment thereon, on p. 118, *infra*, with which we entirely agree).

(2) The second difficulty is caused by the fact that in both *Re Bridgett and Hayes* and *Re Gibbings* the land ceased on the tenant for life's death to be "settled land," yet in the former case a general grant was made, and this was held to include such land, but in the latter case a grant to persons who were S.L.A. trustees under S.L.A., 1925, s. 30 (3), as special executors was made.

We agree with Mr. Watson (*ante*, p. 8) that the two decisions *are* in that respect irreconcilable. But the Probate practice relative to representation in such cases is becoming crystallised along the lines of *Re Bridgett and Hayes* rather than *Re Gibbings*.

In fact the present position may be briefly described as follows :—

(1) The meaning given to "settled land" for the purposes of representation seems to be land which was settled before the deceased's death, and remains settled land thereafter. One must admit that for practical purposes it is expedient at any rate where the value of the estate is small to save expense by having a general grant which would include land vested in the deceased as tenant for life, but ceasing to be settled on his death.

(2) "Land" does not include an undivided share in land: Ad. of E. A., 1925, s. 55 (1) (xxiv); S.L.A., 1925, s. 117 (1) (ix). Hence, the question of special representation in respect of a settled undivided share in land or the proceeds of sale thereof cannot arise.

(3) "Trustees of the settlement" for the purposes of special representation are the persons who are made S.L.A. trustees by S.L.A., 1925, s. 30 (1) or (3): *Re Gibbings*.

(4) It is only where land previously settled remains settled land after the tenant for life's death that the question of special representation is deemed to arise. Even then, if there are no S.L.A. trustees or such trustees are cleared off, a general grant can be made, in this case it will expressly include settled land.

(5) If a grant has been made "save and except settled land," that grant comprises all property to which a deceased person was entitled for an interest not ceasing on his death (see Ad. of E.A., 1925, s. 3), except the legal estate in land settled previously to the death and remaining settled land thereafter. But in terms the exception would include land settled by the will itself which clearly ought to pass to the general executors.

(6) If a general grant of probate is made without any express reference to "settled land," *quære*, whether the special executor deemed to have been appointed under Ad. of E.A., 1925, s. 22 (1), is divested of "settled land," vested in him in virtue of such appointment? But it would appear that a purchaser from him would be protected as the result of the beneficial operation of L.P.A., 1925, s. 204 (1), and Ad. of E.A., 1925, s. 37 (1).

The remedies which would seem to meet the difficulties appear to be as follows :—

(*a*) The form of grants hitherto made excepting "settled land" should be amended so as expressly to apply to all land "except land settled previously to the death and remaining settled land after the death."

(*b*) In future general grants should usually be made subject to this exception.

(*c*) It may be that special grants made to persons who were not S.L.A. trustees by reason of the death should be revoked. At any rate such grants should not be made in the future.

Landlord and Tenant Notebook.

Forfeiture for Breach of Covenant to Repair.

When the Landlord and Tenant Act, 1927, comes into force on the 25th March, 1928, the previous rules as to forfeiture of leases will become subject to an important alteration, so far as the service of the notice required by L.P.A., 1925, s. 146, is concerned. The alteration of the law in this respect will be effected by s. 18 (2) of the Landlord and Tenant Act, 1927, and will apply whether the lease has been created before or after the commencement of the Act: s. 18 (3). Section 18 (2) applies only to covenants or agreements "to keep or put premises in repair during the currency of a lease, or to leave or put premises in repair at the termination of a lease," it being immaterial, however, whether such covenants are general or specific. This appears to be the result of sub-s. (2), but it seems that that sub-section of necessity can only refer to the former class of covenants, i.e., to keep or put premises in repair *during the currency of a lease*.

It is a condition precedent to the right of forfeiture in such cases that the lessor should have first served on the lessee the notice required by L.P.A., 1925, s. 146 (*a*) specifying the breach, (*b*) requiring the lessee to remedy the breach if it is capable of remedy, and (*c*) requiring the lessee to make compensation in money for the breach. This notice, however, need not be served on the original lessee, since, according to sub-s. (5) (*b*) of s. 146 "lessee" includes an "original or derivative under-lessee and the persons deriving title under a lessee, also a grantee under any such grant as aforesaid and the persons deriving title under him."

It is clear, therefore, that under the previous law the lessee was under a disadvantage since the notice might have been served by the landlord on any of these persons, who might possibly have neglected to take the trouble of informing him of the service thereof.

A further disadvantage under which the lessee suffered was that by virtue of L.P.A., 1925, s. 196, constructive notice might in certain circumstances have been sufficient. Thus firstly, as regards the *persons to be served* the notice might be addressed simply to *the lessee*, by that designation and without his name, or generally to the *persons interested*, without any name. Thus an underlessee or an assignee would be a "person interested," but not, however, a trustee, in whose favour the lessee had executed an assignment for the benefit of his creditor: *Gentle* v. *Faulkner*, 1900, 2 Q.B. 267. Secondly, as regards the *mode of service* such service would be sufficient if the notice was left at the last known place of abode or business (in the United Kingdom) of the lessee or other person to be served, or again was affixed or left on the land or any house or building comprised in the lease. Thirdly, as regards the *mode of service* the notice might be sent by registered post addressed by name to the lessee or other person to be served at his last known place of abode or business in the United Kingdom, and such service would be sufficient if the letter was not sent back through the post undelivered. It should be noted, however, that under s. 18 (2) of the Landlord and Tenant Act, 1927, the sending of the notice by registered post *to the last known place of abode in the United Kingdom* will, *primâ facie*, be deemed sufficient in every case, and even though it is submitted the letter is returned through the post office undelivered. All these various modes of service, actual or constructive, remain unaffected except in one particular by the provisions of s. 18 (2), which provisions may be regarded as super-imposing a further condition as to service. It will still be open to the landlord to effect service of the notice in any of the ways above mentioned, but except in cases where service of the notice is effected on the lessee himself personally, or where service is acknowledged, as for example by letter, by the lessee himself, the lessor will have to satisfy the court that the fact that notice has been served, in whatever of the ways mentioned above is immaterial, is known either (*a*) to the lessee, or (*b*) to an underlessee holding under an underlease which reserves a nominal reversion only to the lessee (as for example where there is a sub-letting of the whole of the remainder of the term, less one day or thereabouts); or (*c*) to the person who last paid the rent due under the lease, either on his own behalf or as agent for the lessee or under-lessee.

As this further requirement to the validity of the service of a notice is made by the Act, the period during which the lessee may execute the necessary repairs is correspondingly enlarged, and time will begin to run against him as from the date when knowledge of the notice has come to him, or to the underlessee or person who last paid the rent due.

Our County Court Letter.

ABATEMENT OF NUISANCE.

An action to recover the cost of the above may be brought by a tenant against his landlord, either by statute or at common law. The local authority will in most cases have obtained an order from the magistrates for the payment of the costs by the occupier. The latter's remedy against the landlord may vary according to the Act in force in the district. The Public Health Act, 1875, by the combined effect of ss. 104 and 106, provides that the costs and expenses of the local authority, or of the officer of police authorised by the present Ministry of Health, incurred in making a complaint, or giving notice, or obtaining an order of the court of summary jurisdiction, or in carrying the same into effect, are declared to be money paid for the use and at the request of the person on whom the order is made, or of the person by whose act or default the nuisance was caused. Such costs and expenses are to be recoverable in a summary manner or in any county or superior court. A specific right to sue is also conferred by the Public Health (London) Act, 1891, and by local Acts based thereon. Section 11 (1) states: "All reasonable costs and expenses incurred in . . . carrying the order into effect shall be deemed to be money paid for the use and at the request of the person on whom the order is made . . . and in case of nuisances caused by the act or default of the owner . . . may be recovered from any person who is for the time being owner of such premises."

What if the local authority unknowingly obtain a magistrates' order against the wrong person, e.g., if they proceed against the tenant, and excavations reveal that the root of the trouble is in structural defects for which the landlord is responsible? The tenant then has his remedy, as laid down in *Gebhard* v. *Saunders*, 1892, 2 Q.B. 452. The plaintiff was there tenant from year to year of a house in which a nuisance arose, by reason of sewage collecting in the cellar through a stoppage of drains. The tenant was liable to a penalty of £10 a day if he failed to comply with the abatement notice of the sanitary authority, and he therefore did the necessary work. It was then discovered that the nuisance arose from a structural defect in the drains, in respect of which s. 4 (3) of the last-named Act provides for service of notice on the owner. The judge of the City of London Court non-suited the tenant in an action to recover the expenses from the landlord, as the latter had not been served with the statutory notice. The Divisional Court, however, gave judgment for the plaintiff for the amount claimed, £18 5s. 7d. Mr. Justice Day held that, although no magistrates' order had been obtained, and no notice under s. 4 (3) had been served on the owner, the latter was nevertheless liable under s. 11 (1) above. Mr. Justice Charles held that the ordinary principle of law applied apart from the statute, i.e., where one man has been legally compelled to expend money on what another man ought to have done, the plaintiff is entitled to recover the amount as money paid for the use and at the request of the defendant.

The local authority may also themselves sue in the county court for the cost of abatement, instead of proceeding summarily before the magistrates. There are anomalies in the situation, and each case must be dealt with according to the relevant section. The general rule appears to be that while the magistrates' jurisdiction is unlimited in amount, proceedings are subject to a limitation of six months. On the other hand, while the county court jurisdiction is subject to the usual limitation of £100, the proceedings may usually (but not invariably) be brought within the time permitted for the recovery of debts, viz., six years.

Nuisances are not dealt with by the Private Street Works Act, 1892, but alternative remedies in the police and county courts are also provided thereunder.

The procedure under the Public Health Act, 1875, is by plaint and summons, and an exceptional power is conferred by s. 255, which provides that in any proceedings relating to nuisances, it shall be sufficient to refer to the owner or occupier of any premises by the designation of "owner" or "occupier" of such premises, without name or further description. This power is strictly confined to the case of nuisances, and the Court of Appeal held, in *Friern Barnet U.D.C.* v. *Adams*, 1927, 2 Ch. 25, that it did not extend to a claim to recover the expense of making up a road.

Practice Notes.

PROBATE.

In a former note, 72 Sol. J., p. 8, were pointed out the general advantages of pleas of want of knowledge and approval or unsoundness of mind over pleas of undue influence or fraud.

To these may be added the benefit of the protection of a notice under Ord. XXI, r. 18, which is not applicable to pleas of undue influence or fraud.

Order XXI, r. 18, is as follows: "In probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall not, in any event, be liable to pay the costs of the other side, unless the judge shall be of opinion that there was no reasonable ground for opposing the will."

This special protection as to costs is derived from the practice of the former Prerogative Court. It is strictly limited as to the persons who can avail themselves of it, and since 1898, when the concluding clause was added to the rule, even those persons may be condemned in the costs of the other side at the discretion of the judge.

A party seeking to call in and obtain revocation of probate, as distinct from a party who enters a caveat and takes the ordinary steps to oppose the proof of a will, is not within the rule, nor can a legatee under an earlier will avail himself of it.

A possible form of notice within the rule is a conditional notice merely to cross-examine the attesting witnesses. That seemingly would narrow the inquiry down to proof of due execution. Proof in solemn form and cross-examination of witnesses in support of the will would embrace proof of capacity and of knowledge and approval, in addition to proof of due execution; but it is submitted that these latter matters seriously require probing, that the more satisfactory method of doing so is by a full investigation upon the action, wherein the opposing party can call rebutting evidence, and if there are reasonable grounds for demanding an investigation, the opposing party may expect to get his costs out of the estate.

A set of circumstances to which procedure by notice to cross-examine witnesses would be most applicable would be where the opposing party's solicitors had taken statements from the attesting witnesses, as they are entitled to do at any time, the witnesses being "witnesses of the court," and those showed discrepancies in themselves or were in contradiction of statements made by the attesting witnesses to the solicitors propounding the will.

BANKRUPTCY.

An important recent bankruptcy decision is *Latter* v. *Juckes*, 70 Sol. J. 905; 1926, W.N. 167 and 261, in which the Court of Appeal over-ruled the decision of Vaughan Williams, L.J., when a judge of first instance in *Watkins* v. *Barnard*, 1897, 2 Q.B. 521.

Section 41 (2) of the Bankruptcy Act, 1914, is as follows:—

"Where, under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall . . . retain the balance for fourteen days and if within that

time notice is served on him of a bankruptcy petition having been presented by or against the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the sheriff has notice the sheriff shall pay the balance to . . . the trustee, who shall be entitled to retain it as against the execution creditor."

In *Latter* v. *Juckes* it was decided, contrary to *Watkins* v. *Barnard*, *supra*, which though dealing with an administration of an estate of a deceased insolvent, had been generally accepted as authoritative, that the words "any other petition of which the sheriff has notice" might extend to notice of a subsequent petition served after the period of fourteen days. That fourteen days was the limit within which notice of a petition must be served, but if served, then the sheriff must hold upon it for an uncertain time, and if notice arrived of another petition then the sheriff must continue to hold upon both petitions even if notice of that other petition were not received within the fourteen days.

The restriction of the rights of an execution creditor in this way is an extreme application of the principle of equal distribution of assets amongst all the creditors from the moment of proof of insolvency. This instance appears more logical when it is remembered that the title of the trustee, if bankruptcy ensues, will relate back to the earliest act of bankruptcy committed by the debtor within three months preceding the presentation of the petition on which the receiving order is made, so that notionally at the time when the creditor was levying execution the goods had ceased to be the debtor's.

Correspondence.

Directions of the Registrar of the Principal Probate Registry.

Sir,—I have already commented at length on the above, but Mr. E. O. Walford, in his letter published in this week's issue, appears to have misinterpreted the words of the directions quoted by him in italics. By a grant "not mentioning or including settled land" the Registrar certainly meant a grant not *specifically* including settled. This because, according to the decision in *Bridgett and Hayes*, there is no settled land.

The Registrar does not say that if, by error, a general grant is taken when there is settled land, the latter will not vest in the persons to whom the grant is made. His words merely refer to the *form* of grant, viz., that it is to be a general one, neither including nor excluding settled land.

Norwich. ERNEST I. WATSON.
11th February.

[This matter is discussed in "A Conveyancer's Diary" on p. 115 *ante*, where general agreement is expressed with Mr. Watson's comments made in his two letters.—ED., *Sol. J.*]

"The New Conveyancing."

Sir,—We are just working out a typical example of the manner in which the Property Acts are simplifying conveyancing. The following are the facts:—In 1919 a testator died, having, by his will, devised realty to his two sons (whom he appointed trustees), upon trust for his wife for life, and upon her death, upon trust for sale and division amongst the testator's children. The widow was the testator's second wife and she died on the 3rd October last without issue or any known relative (other than her step-children), and her estate was insolvent.

In view of the new Probate directions, we are informed we must obtain a general grant of administration of the widow's estate to a creditor, the Procurator-General must be cited, bondsmen must justify and altogether considerable expenses entailed: all with the object of creating somebody who can sign an assent to the trustees of the will. The total free assets of the widow's estate are under £25.

Cannot something be done to obviate a hardship of this character?

Petersfield, Hants. BURLEY & GEACH.
9th February.

[It seems that administration in respect of the trust estate only should be granted to the two sons under Judicature Act, 1925, s. 155 (1), and that no sureties should be required: *ib.*, s. 167 (7). This appears to remove the suggested difficulties. —ED., *Sol. J.*]

Acreage of Lands.

Sir,—I recommend Derbyshire Solicitor to consult the 18th Edition of Rouse's "Practical Manual," Pt. II, pp. 18 and 184.

Lincoln's Inn, W.C. C. P. S.
10th February.

Acreage of Lands—Lancashire and Cheshire.

Sir,—With reference to the letter of Derbyshire Solicitor, in your issue for the 11th inst., I question the accuracy of the statement that more than one measure is now in use in Lancashire. All modern plans I have seen have been in statute measure; would any other be legal? See Halsbury's "Laws of England," XXVIII, 468.

I have a small book, printed in 1854, containing six tables for the conversion of customary measures into statute and into each other, and the measures given are:—

Statute .	5½ yds. to the rod	and	4,840 sq. yds. to the acre
Scotch .	6 ,, ,, ,, ,, ,,		5,760 ,, ,, ,, ,, ,,
Scotch .	6½ ,, ,, ,, ,, ,,		6,760 ,, ,, ,, ,, ,,
Lancashire	7 ,, ,, ,, ,, ,,		7,840 ,, ,, ,, ,, ,,
Lancashire	7½ ,, ,, ,, ,, ,,		9,000 ,, ,, ,, ,, ,,
Cheshire	8 ,, ,, ,, ,, ,,		10,240 ,, ,, ,, ,, ,,

The last may be the same as that used in Wales, for the acre is more than twice (2.115 times or so), the size of the statute acre.

In old deeds, and in modern by repetition, the area was often given in customary measure, sometimes without mention, sometimes as such and sometimes with the actual rate mentioned. I do not see how this could be usefully referred to in the text-books, etc., because it is not matter of law, but of fact, and in case the old title deeds gave too small an area the question would be "parcel or not parcel," and the actual measure used would require to be decided by evidence, particularly as it was, to some extent at least, dependent on the surveyor, and not on the locality. Here more than twenty miles from the Cheshire border the measures used were the 7 yards and the 8 yards to the rod, and, I think, occasionally, but rarely the 7½ yards, but the most usual would seem to have been that named the Cheshire; it is on record in one district more than 300 years ago, that part should be measured by the 8 yards rod and part by the 7 yards rod.

Litigation has probably been prevented by the fact that the statute acre is the smallest. No purchaser having bought a farm with particulars giving (say) 100 acres, which are presumably statute, would complain when he found that they were in fact Lancashire or Cheshire acres, and that he had acquired 161 or 211 acres.

LANCASTRIAN.

The attention of the Legal Profession is called to the fact that THE PHŒNIX ASSURANCE COMPANY LTD., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22 Lincoln's Inn Fields, W.C.2; and throughout the country.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in duplicate. Each copy to contain the name and address of the subscriber. To meet the conveniences of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Copyholds—Settled Land—Death of Tenant for Life—Undivided Reversionary Shares.

Q. 1142. A died in 1906, having by his will devised certain copyholds to trustees, his wife, B, and his eldest son, C, upon trust for his wife for life, and after her death, he devised the same unto and equally between his children who should be living at the time of his decease as tenants in common, with a proviso for issue of deceased children taking their parents' share. C was admitted tenant on the Court Roll in 1908, and died in 1922 in the lifetime of B, leaving ten children. B died in 1927, leaving nine grand-children, issue of C (entitled to one-third of proceeds of sale), one grandchild issue of another deceased son (entitled to one other third of proceeds), and one daughter (entitled to the remaining one-third of proceeds), and no representation has been taken out as B left no estate. What is now the position? It would appear that the case falls within para. 2 of Pt. IV of the 1st Sched. of L.P. A., 1925, and that, there being no trustees of A's will living, and the devise to A's children being a direct devise in remainder, and there being also no personal representative of B, the eleven beneficiaries should now appoint by deed two trustees (from among themselves or otherwise), to carry out the sale of the property under the statutory trusts. Is this so?

A. On 1st January, 1926, the enfranchised land vested in B, whether by the operation of the L.P.A., 1922, 12th Sched., para. (8), prov. ii, and s. 202 of the L.P.A., 1925 (as to the doubt about the application of prov. ii, see *Q.* 196, vol. 70), or by the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*). On her death since the property ceased to be settled land, the grant in respect of it will go to B's general representatives under the decision in *Bridgett and Hayes' Contract*, 1927, 71 Sol. J., 910. Representation is therefore imperative. The duty of B's administrators if and when constituted will then be to pay or provide for death duties, and subject thereto, to assent to the devolution of the land to the beneficiaries under s. 36 (1) of the A.E.A., 1925, or convey to them, under s. 7 (5) of the S.L.A., 1925. Such assent or conveyance will operate in accordance with s. 34 (2) or 36 (1) of the L.P.A., 1925, and also s. 19 (2) if there are infants. Part IV of the 1st Sched. to the L.P.A., 1925, was not applicable to this case on 1st January, 1926, for the land was not then held in undivided shares vested in possession.

Purchaser's Covenant in Conveyance to build Garage—Whether Personal.

Q. 1143. A.B. was the owner of two adjoining houses (X House and Z House) and lived in X House, and used a garage forming part of Z House premises. In October, 1921, A.B. conveyed Z House (including the garage) to C.D., subject to a reservation of "a right for the vendor to retain the use of the motor-house marked red on the plan until such time as the purchaser shall at her own cost erect for the vendor a motor-house of the dimensions and materials and construction hereinafter mentioned whereupon the vendor shall surrender to the purchaser the use of such motor-house marked red on the plan." The conveyance contained the following covenant: "The purchaser hereby covenants with the vendor that she will at his request at her own expense erect for the vendor a motor-house constructed of," etc., etc., "on a portion of the garden land belonging to the vendor situate" on the opposite side of the street. A.B. continued to use the garage until (in October, 1926) he sold X House (with the piece of garden on the opposite side of the street) to E.F., who has since his purchase occupied X House and used the garage. The conveyance to E.F. contains no express reference to the right to use the garage. A.B. and E.F. have now jointly called upon C.D. to erect the new motor-house in accordance with her covenant. C.D., however, contends that the reservation of A.B.'s right to retain the use of the motor-house was a personal one to him only, and that as he had ceased to live in X House such right lapses and cannot be claimed by the present owner of that house. It will be noticed that the reservation was for "the vendor" without mentioning his successors in title, and that C.D.'s covenant was with "the vendor" only. On the other hand, A.B. contends that the arrangement was that C.D. was to build a new garage, and that until she had done so A.B. should retain the use of the existing garage. This contention is supported by the fact that in the contract the provision as to the reservation of A.B.'s right to retain the use of the garage reads "until such time (not exceeding three years) as the purchaser shall erect for the vendor a motor-house," etc., etc. The words "not exceeding three years" were, however, not inserted in the conveyance to C.D. because at her request A.B. consented to the omission of this specified period. A.B. claims that there is an unqualified covenant by C.D. to build the new motor-house, and that he can call upon her to do so at any time during his life. Your opinion will be much appreciated as to whether C.D. can be compelled to erect the new motor-house, although A.B. has sold and ceased to reside in X House, and therefore does not require the garage for his own personal use?

A. It is clear that this covenant would not have run with the land at law, see second resolution in *Spencer's Case*, 1583, 5 Coke's Rep. 16 b. It is also clear that, involving expense as it does, it would not affect a purchaser from C.D. (*Austerberry* v. *Oldham Corpn.*, 1885, 29 C.D. 750), and that A.B., who no longer owns the land, cannot enforce it: see *L.C.C.* v. *Allen*, 1914, 3 K.B. 642; *Chambers* v. *Randall*, 1923, 1 Ch. 149. If the right is regarded as in the nature of an equitable easement (see *L.C.C.* v. *Allen*, p. 663) there is a dominant tenement, X House, but no servient tenement, for the owner of Z House as such is not bound: see also *Haywardv. Brunswick Building Society*, 1881, 8 Q.B.D. 403. On the law laid down in these cases the conclusion must be that A.B.'s covenant was a personal one with C.D.—who, however, can no longer enforce it. In the circumstances, the easement in respect of the Z House garage would now appear to be a binding and perpetual legal easement. So far as the conveyance is clear in its terms, the contract cannot be inspected to correct it.

Undivided Shares—Lease—Partition.

Q. 1144. By a lease, dated the 16th March, 1927, a plot of land was leased to A and B (two brothers), for the term of 999 years, at the yearly rent of £6 5s. The exact words of the lease being "To hold unto the lessees for the term of 999 years from the 12th day of November 1926 Yielding and paying etc. . . ." Subsequently, pursuant to a verbal agreement between them, A and B divided the land, each taking one moiety and erected on his respective moiety a house and shop; each is now desirous of obtaining a mortgage of £600 upon his property. Presumably, upon the wording of the habendum quoted above, A and B hold the property as joint tenants in law and equity, and, consequently, are subject to the risk of survivorship; it therefore seems desirable before arranging a mortgage or mortgages to sever the ownership so that each may become sole owner of his respective property. A and B

wish to incur as little expense as possible. Your opinion is requested as to how this may be done so as to incur as little expense as possible. I have considered (1) Having the lease surrendered and two new leases granted to A and B separately, but the objection to this is the expense involved. (2) Arranging for A and B to grant separate underleases to each other, but presumably since the property now erected on the plot is of the value of about £1,500, each underlease, since it passed one moiety of this would presumably have to be stamped *ad valorem*, and this again would be expensive. Are you of opinion that these would have to be so stamped ? Would it be possible to sever the joint tenancy in equity by notice ? If so, there would still have to be one joint mortgage of £1,200. What would be the position of A and B with regard to this, assuming one of them died before the mortgage was paid off ?

A. A and B were and continue to be trustees for sale of the lease under the L.P.A., 1926, though they may have severed the joint tenancy in equity. The simplest method would be for them to exercise their powers of partition under s. 28 (3). If no money passes for equality of partition, the stamp will be 10s. under the Stamp Act, 1891, s. 73. If possible, the lessor should join in to apportion the rent.

Settled Land—Death of Tenant for Life Intestate —Title.

Q. 1145. Under a settlement by deed, dated prior to 1st January, 1926, A and B are trustees, and C the tenant for life. The tenant for life died in February, 1927, without having had the property vested in her and without a will. A and B now hold the greater part of the real property in trust for themselves, in equal shares, and as regards the remainder in trust for D. D has contracted to sell to B his share. Thus, A and B, the trustees, are between them, in equity the sole owners. Are A and B bound by s. 13 of the S.L.A., 1925, to (1) take out special representation to C ; (2) as such special representatives, execute a deed vesting the property in themselves, as statutory trustees ; and (3) to execute a deed of partition between themselves of such of the property as passes to them under the settlement, and to execute a conveyance to D of his portion ; and (4) to obtain a separate conveyance from D to B. Or, is the pre-1926 status of A and B, as trustees, sufficient to enable them to execute a deed of partition between themselves, and with the consent or by the direction of D, to convey to B that portion which is devised to D by the Settlement ?

A. Although there may not have been a vesting deed, the property vested in C in legal fee simple on 1st January, 1926, by virtue of the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*), and on his intestacy in the Probate Judge under the A.E.A., 1923, s. 9. The land no longer being settled land, the grant in respect of it will go to C's administrators in accordance with the practice determined on *re Bridgett and Hayes Contract*, 1927, 71 Sol. J. 910, see p. 980. They, whether A and B or others, should then assent to the devolution of D's share to him and A and B's share to them. D can then convey to B. A and B will hold their share on trust for sale, and can partition on the recital that they alone are interested under the L.P.A., 1925, s. 28 (3).

Statutory Trusts—Consent of Persons interested— Mortgagees of Pre-1926 Undivided Shares.

Q. 1146. Property consisting of nine cottages was held by three brothers in undivided shares on 1st January, 1926, subject to legal mortgages by two of the brothers to separate mortgagees of their respective shares. The brothers desire, after divesting the Public Trustee by an appointment of themselves as trustees for sale, to partition the cottages. What standing have the mortgagees in this matter ? We observe that (*a*) their incumbrance is divested and shifted to the proceeds of sale, (*b*) their consent is required both for appointment of trustees and for exercise of trust for sale, (*c*) no subsequent purchaser of any part of the property need enquire as to such consents. It appears to us :—

(1) That the consent of mortgagees required for sale does not extend to partition.

(2) That if consent is required the mortgagees have no right to insist as a condition of such consent that their mortgagor should subsequently execute a legal mortgage of the apportioned property.

(3) That, failing consent, partition could in any case be made. That the mortgagors would take their respective deeds and could deal with the property absolutely.

(4) That the mortgages having been divested, are not now registrable as land charges.

(5) That if the mortgages are registrable (under Class C (1) or otherwise) such registration, whether before or after partition, will have to be against the whole of the property and not against the apportioned share.

Is our reasoning correct, and if so, how (if at all) can we protect the mortgagees' interests ?

A. (*a*) Yes ; but they continue to be interested in the property ; see L.P.A., 1925, s. 35.

(*b*) and (*c*) Agreed.

(1) The opinion here given is that such consent is necessary to partition : see L.P.A., 1925, s. 28 (3), seeing that the mortgagees are persons interested in the net rents and profits of the land until sale ; see *ib.*, sub-s. (2).

(2) L.P.A., 1925, ss. 28 (2) and 35, impose a duty upon the trustees for sale to give effect to the rights of incumbrancers of a former undivided share. It would seem quite reasonable for the incumbrancers to insist upon the execution of a legal mortgage after partition to be a condition of consent, unless some other adequate provision is made.

(3) Without such consent the partition would be in breach of trust, though a purchaser would not be concerned with the absence of the consent.

(4) They are not registrable.

(5) After apportionment without a legal mortgage registration might be made against each apportioned part of the land. But the proper course is the execution of legal mortgages which will not require registration at all. The mortgagees should refuse to consent until proper steps are taken to protect their interest by the execution of legal mortgages.

Infant entitled to Land—Procedure on attaining Majority.

Q. 1147. A testator died in 1910 leaving his wife and two others executors. He gave his wife a freehold house " upon trust for their son on his attaining twenty-one years, the income in the meantime to be used for his benefit." After probate all three executors conveyed the house to the widow in fee simple " upon the trust declared in the will." The son has just attained the age of twenty-one years and it is desired to convey the property to him. Is there anything to prevent the widow conveying to the son direct ? There is no trust for sale, and it hardly seems necessary to appoint an additional trustee and execute a vesting assent or deed as there is no capital money to be received.

A. If the son had attained twenty-one before 1st January, 1926, a conveyance to him after 1925 would not seem to be necessary in view of L.P.A., 1925, 1st Sched., Pt. II. If the son was an infant on 1st January, 1926, the legal estate in the land was divested from the widow and vested in the trustees of the settlement (*i.e.*, the executors of A's will : S.L.A., 1925, s. 30 (3)) as statutory owners : S.L.A., 1925, 2nd Sched., para. 3 (1). Now that the son is of age he is entitled to a conveyance of the legal estate to him pursuant to S.L.A., 1925, s. 7 (5).

THE MIDDLESEX HOSPITAL.

When called upon to advise as to Legacies, please do not forget the Claims of the Middlesex Hospital, which is urgently in need of Funds for its Humane Work.

NOTES OF CASES.

Court of Appeal.

No. 1.

Jacobson *v.* **Frachon.** 23rd November, 1927.

FOREIGN JUDGMENT—ESTOPPEL—ACTION FOR BREACH OF CONTRACT—FOREIGN JUDGMENT PLEADED IN DEFENCE—"CONTRARY TO NATURAL JUSTICE"—FAILURE IN DUTY OF EXPERT APPOINTED BY FOREIGN COURT—COURT NOT BOUND TO ACCEPT HIS REPORT—ESTOPPEL.

Appeal from a decision of Roche, J., dismissing an action for breach of contract. The plaintiffs, a British firm, in 1924 placed two large orders with the defendants, silk manufacturers of Lyons, for crêpe de chine, and they complained that the defendants' deliveries were out of time, short in quantity, and of inferior quality to the samples supplied to them. Protests were made and a long correspondence took place in which an attempt was made to settle the dispute. Ultimately the plaintiffs brought this action for damages, as they had been obliged to purchase other goods to fulfil their contracts. The defendants, however, brought an action in the Lyons Commercial Court against the plaintiffs, claiming a cancellation of the contracts and return of the goods. In this action the French court appointed an expert to come to London to take evidence, view the goods, and report to the court. Upon his report that court decided in favour of the French plaintiffs. The English action came on for trial after much delay, and the defendants pleaded that the judgment given in their favour was a complete defence to the action. The plaintiffs' reply was that the judgment was obtained by unfair means and was contrary to British ideas of natural justice, and therefore ought not to bind. Roche, J., held that the French judgment was binding upon him and dismissed the action. The plaintiffs appealed.

THE COURT dismissed the appeal. The grounds of the plaintiffs' attack on the validity of the French judgment were the appointment of the expert and his conduct and alleged neglect of his duties. It was plain from the findings of Roche, J., that the expert, V, had not acted in the manner that would be expected of experts in this country. It was proved that he had only made a short and incomplete examination of the goods supplied, that he had refused to take the evidence of the plaintiffs and their witnesses, and the judge found that his report was biassed in favour of the defendants and unfair. It was also proved that V was connected by marriage with a partner of the defendants in another business, but not that the French court was aware of the connexion when it appointed him. On the other hand, it was shown that the French court was not bound by the expert's report, and had admitted and heard evidence to counteract it. The effect of the report was merely that of evidence before the court. But even if the report were unfair, it was impossible to set aside or ignore the judgment of the French court in the action in which the English plaintiffs appeared as defendants. A foreign judgment could not be impeached on its merits, it could only be upset on the ground of being contrary to natural justice on certain very limited grounds, such as that the decision was arrived at by fraud of one of the parties, that the case had not been properly heard by the court, or that the procedure of the foreign court had not been properly followed: per Lord Lindley, M.R., in *Pemberton* v. *Hughes*, 1899, 1 Ch., at p. 790; *Abouloff* v. *Oppenheimer*, 10 Q.B.D. 301. Here the evidence of unfairness before the court fell far short of what was necessary to prevent the judgment of the French court being a good defence to the action. The appeal must be dismissed.

COUNSEL: *J. B. Matthews*, K.C., and *Turner-Samuels*; *Jowitt*, K.C., and *B. B. Stenham*.

SOLICITORS: *C. Butcher & Simon Burns*; *Russell & Arnholz*.

[Reported by H. LANGFORD-LEWIS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

***In re* Reeves: Reeves *v.* Pawson.**

Russell, J. 26th January.

WILL—CONSTRUCTION—GIFT OF "MY PRESENT LEASE"—LEASE EXPIRES—NEW LEASE GRANTED AFTER EXECUTION OF WILL—SUBSEQUENT CODICIL CONFIRMING WILL—WILLS ACT, 1837 (1 Vict. c. 26), s. 24.

Originating summons. This was a summons taken out by trustees to determine whether a gift in a will to a daughter of "all my interest in my present lease of No. 1, Chesterfield-street" passed an after acquired lease. The facts were as follows: The testator by his will dated 3rd May, 1921, bequeathed to his daughter "all my interest in my present lease of No. 1, Chesterfield-street." On 29th September, 1924, the lease expired, but on 31st December, 1923, the testator acquired a new lease for twelve years as from Michaelmas, 1924. On 10th February, 1926, the testator added a codicil to his will and therein stated "in all other respects I confirm my said will."

RUSSELL, J., after stating the facts, said: By the use of the words "in all other respects I confirm my will" the testator has brought down the date of the will to the date of the codicil, and so made the bequest in the will operate in the same way as it would have done if the words of the will had been contained in the codicil of later date: *In re Champion*, 1893, 1 Ch. 101; *In re Fraser*, 1904, 1 Ch. 726; *In re Smith*, 1916, 1 Ch. 523; *In re Hardyman*, 1925, Ch. 287. It has been contended that the expression "my present lease" shows a contrary intention within s. 24 of the Wills Act, 1837, and can only refer to the old lease which had expired; but in my judgment, so far from that being the case, the testator has used an expression that exactly fits the circumstances existing at the date of the execution of the codicil. At that date "my present lease" was the lease dated 31st December, 1923. Full effect can be given to that bequest and the benefit of the lease passes to the testator's daughter.

COUNSEL: *Jenkins*, K.C., and *Wright Taylor*; *Farwell*, K.C., and *D. D. Robertson*; *Stafford Crossman*.

SOLICITORS: *Sydney E. Preston*; *Chapman-Walker and Shephard*.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Harker *v.* **Britannic Assurance Co., Ltd.**

Lord Hewart, C.J., Avory, J., Branson, J. 13th January.

INSURANCE—CHILD UNDER SIX—UNLAWFUL ASSURANCE—LIMIT OF £10—INDUSTRIAL ASSURANCE ACT, 1923, 13 & 14 Geo. 5, c. 8, s. 4, s. 39 (2)—FRIENDLY SOCIETIES ACT, 1924, 14 & 15 Geo. 5, c. 11, s. 2 (1).

H. P. Harker, the appellant, preferred an information at Goole Petty Sessions on the 13th April, 1927, under s. 39 of the Industrial Assurance Act, 1923, charging the Britannic Assurance Co., Ltd., the respondents, with unlawfully assuring on the 18th October, 1926, £15 10s. payable on the death of Frederick Cowling, a child under six years of age, contrary to s. 4 of the Act, as amended by s. 2 of the Friendly Societies Act, 1924. There were three policies concerned, the sums assured being £4 10s., £2, and £9 respectively. The justices dismissed the information. The appellant appealed.

Lord HEWART, C.J., allowing the appeal, said that s. 39 (2) of the Industrial Assurance Act, 1923, provided that any industrial assurance company which contravened or failed to comply with any of the provisions of the Act should be guilty of an offence under the Act. It followed that if an industrial assurance company assured a child for a sum which exceeded the sum mentioned in s. 2 (1) of the Friendly Societies Act, 1924, that was to say, in the case of a child under six years

of age, £10, the company was guilty of an offence under the Act of 1923. In his opinion if a company committed an offence under the statute, it did so none the less because it might also be perpetrating a gross fraud upon the assured.

AVORY, J., and BRANSON, J., delivered judgments to the same effect.

COUNSEL: *H. M. Giveen*, for the appellant; *Comyns Carr*, K.C., and *G. R. Blanco White*, for the respondents.

SOLICITORS: *The Treasury Solicitor; Kingsley Wood, Williams & Co.*, for *J. G. Cooper*, Birmingham.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Francis Adams Limited *v.* **Fishwick and Others.**

MacKinnon, J. 20th January.

COMPANY PROMOTED — WOUND UP — CLAIM FOR MONEY ADVANCED—LIABILITY OF DIRECTORS.

The plaintiffs claimed from the defendants the sum of £4,000 as expenses incurred in connexion with the registration and promotion of a company, The Consolidated Produce Corporation, Limited. They claimed the money, which they had handed to the promotor of the company, on the grounds that it was lent to the defendants, who became directors of the company, and who had guaranteed repayment. The plaintiffs had previously obtained judgment by default for £4,000 against the promotor of the company, who, however, had become bankrupt, and they now sought to recover from the defendants as guarantors. The defendants denied personal liability.

MACKINNON, J., giving judgment for the defendants, said that they obviously could not be liable both as borrowers and as guarantors. He was of the opinion that the promise to pay made by the defendants was not a promise as individuals, but was made on their behalf as officials of the Company.

COUNSEL: *Le Quesne*, K.C., and *Theobald Mathew* for the plaintiffs; *Upjohn*, K.C., *Merriman*, K.C., and *R. Fortune* for all the defendants except one; *Philip Vos* for defendant Horn.

SOLICITORS: *Gasquet, Metcalfe & Walton; Kimber, Bull, Howland, Clappé & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Stopp *v.* **Hill & Sons.** Lord Hewart, C.J. 3rd February.

SALE OF SAPPHIRES—NOT REAL STONES—"RECONSTRUCTED"—INVOICE DESCRIPTION—BREACH OF WARRANTY.

The plaintiff in this action, trading as a firm of jewellers, bought from the defendants, wholesale and manufacturing jewellers, a "sapphire and diamond" bracelet for £165. The plaintiff subsequently sold the bracelet to a customer for £190, but returned the money when it was discovered that the sapphires were not real stones, but were "reconstructed." The plaintiff now claimed the return of the £165 paid to the defendants, or alternatively, damages for breach of warranty. The defendants pleaded that the plaintiff knew at the time of purchasing that the sapphires were reconstructed.

Lord HEWART, C.J., said that the approbation note and also the invoice described the bracelet as a sapphire and diamond bracelet. The practice of the trade under the rules of the London Chamber of Commerce was that reconstructed, synthetic and imitation stones of all kinds were to be sold and invoiced as such. He was satisfied that there had been a breach of warranty, and gave judgment for the plaintiff for £20 without costs.

COUNSEL: *Humfrey Edmunds*, for the plaintiff; *J. B. Melville*, K.C., and *J. P. Valetta*, for the defendants.

SOLICITORS: *Stanley Attenborough & Co.; William White and Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Britt *v.* **Galmoye and Nevill.** Shearman, J. 9th February.

MASTER AND SERVANT—MOTOR-CAR—LENT TO SERVANT FOR OWN PURPOSES—ACCIDENT—MASTER NOT LIABLE.

The plaintiff in this action, while standing on a trestle in a road at Lewisham and painting the under-side of a bridge, was injured as a result of a motor-car belonging to the defendant Galmoye striking the trestle, which was guarded from traffic by a red-lighted barrier. The driver of the car, Nevill, the co-defendant, was Galmoye's servant and friend, and the car had been lent to him for the purpose of taking two friends to the theatre. Galmoye was not in the car.

SHEARMAN, J., referred to a number of authorities dealing with the various circumstances in which a principal is liable for the acts of his servant, and said that in this case the servant was in the position of a stranger to his master after his work was finished. The journey was not on the master's business. Judgment for the defendant Galmoye, with costs. His lordship added that the plaintiff was entitled to ask for judgment against Nevill for what it was worth, but by doing so might prejudice his position in the event of an appeal as to Galmoye.

COUNSEL: *E. F. Lever*, for the plaintiff; *E. Duke*, for the defendants.

SOLICITORS: *W. B. Blackwell & Co.; R. H. Hargreaves.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Societies.

The Law Society.

A moot was held at the Society's Hall on 8th February, Mr. H. O. Danckwerts (Reader), presiding. The following case was argued:—

Smith v. *Smith.*

The plaintiff, Mrs. Ellen Smith, has brought an action in the Chancery Division, claiming an injunction restraining the defendant, the plaintiff's husband, Robert Smith, from using or otherwise interfering with a "Rover" motor car belonging to the plaintiff. The following facts are proved at the hearing: Mrs. Ellen Smith (who has an income of £150 a year of her own) bought the car in March, 1927, out of money which she had made by breeding dogs, and the car is registered in her name. Since then the car has been driven on different occasions by both Mrs. Ellen Smith and Mr. Robert Smith, who are both competent drivers. Prior to the 12th January, 1928, the usual practice was for Mr. Robert Smith to use the car for the purposes of his business as a surveyor during the week, unless Mrs. Smith had some particular occasion for using the car, when he used to leave it for Mrs. Smith. Recently Mrs. Smith has taken up golf very keenly, and at the present time she plays about five times a week, generally on a course about five miles away from the Smiths' home, but occasionally on another course about twelve miles away. Mrs. Smith on the 12th January, 1928, informed Mr. Smith that in future he would be unable to have the use of the car as she would require it herself. Mr. Smith replied "business before pleasure," and since then has continued to use the car for his business daily, in spite of Mrs. Smith's protests. The Smiths' home is owned by them as joint tenants (having been so conveyed to them in 1913, when Mr. and Mrs. Smith were married, the price having been provided by them in equal shares), and the car is kept in a garage forming part of the premises. Mr. Robert Smith has paid the licence duties on the car. Petrol and sundries have usually been paid for by whichever was driving the car at the time. Apart from the dispute about the car, the parties are living amicably together.

Mr. J. H. A. Lang, for the plaintiff, relied principally on the strict interpretation of s. 12 of the Married Women's Property Act, 1882.

For the defendant, Mr. E. W. Tilley argued that an injunction was an inappropriate remedy in all the circumstances, and, if granted, would cause undue hardship.

The court (Mr. H. O. Danckwerts, Mr. E. F. Iwi, and Mr. M. S. Fruitman) gave judgment for the defendant, Mr. Danckwerts pointing out that the wife had another and summary remedy under s. 17 of the Married Women's Property Act, 1882.

Gray's Inn.

Mr. Timothy Healy, K.C., was entertained in Gray's Inn Hall, on Wednesday, the 15th inst., at a House Dinner given to celebrate the completion of his term of office as the first Governor-General of the Irish Free State.

Mr. Healy became a student of Gray's Inn in 1880. Twenty-three years later he was called to the Bar by the Society, having meanwhile become a Queen's Counsel of the Irish Bar. In 1910 he was elected a Master of the Bench of Gray's Inn.

The Treasurer, Mr. R. E. Dummett, presided at the dinner and proposed the toast "Master Timothy Healy." Lord Birkenhead supported the toast and Mr. Healy replied. The toast of "The Treasurer" was proposed by Lord Merrivale.

So many applications were received from members of the Society who desired to be present that dinner was served in the gallery as well as in the body of the hall. It was still only possible to accommodate about half the number of members who applied.

The following Masters of the Bench were present in addition to the Treasurer and those already named: Sir Miles Mattinson, K.C., Mr. Thomas Terrell, K.C., The Right Hon. Sir D. Plunket Barton, Bart., K.C., Mr. Herbert F. Manisty, K.C., Mr. Arthur E. Gill, The Right Hon. Lord Atkin, Sir Montagu Sharpe, K.C., His Honour Judge Ivor Bowen, K.C., Mr. W. Clarke Hall, The Right Hon. Sir Hamar Greenwood, Bart., K.C., M.P., Sir Walter Greaves-Lord, K.C., M.P., Mr. G. D. Keogh, Mr. Bernard Campion, K.C., Mr. J. W. Ross-Brown, K.C., Mr. James Whitehead, K.C., Mr. Frederick Hinde, Mr. R. Storry Deans, M.P., Mr. A. Andrewes Uthwatt, and Mr. Malcolm Hilbery, with the Under-Treasurer (Mr. D. W. Douthwaite).

Legal Notes and News.

Professional Partnerships Dissolved.

BARRY WILLICOMBE MASON, MICHAEL STILEMAN DAWES, ARTHUR ELLIOT SHUTER, WILLIAM RALPH INGHAM-THOMPSON, and ARTHUR PERCIVAL WHATLEY, solicitors, 81-87, Gresham-street (Dawes & Sons), as from 31st December, so far as regards W. R. Ingham-Thompson.

JOSEPH WILKINS PARKER and HAROLD JOHN BROWN, solicitors, Worthing (Parker and Brown), as from 31st December. J. W. Parker will continue to carry on the business under the style of J. W. Parker.

GEORGE PASSINGHAM, ALFRED EDWARD PASSINGHAM and ARTHUR HILL, solicitors, Hitchin, Herts (Passingham and Hill), by mutual consent as from 31st December.

CHARLES FREDERIC DAWSON, HAROLD SIGSTON THOMPSON, and DOUGLAS GREEN, Solicitors, Boroughbridge, York (Hirst and Capes), by mutual consent as from 31st December, D. Green will continue to carry on practice in his own name. C. F. Dawson and H. S. Thompson will continue to practise as solicitors at Harrogate, York, under the style of Hirst and Capes.

THOMAS JAMES DYSON and THOMAS EDWIN JACKSON, Solicitors, Huddersfield (Laycock, Dyson and Laycock), by mutual consent as from 31st December. The business will be carried on in future by T. E. Jackson under the same style.

Resignations.

Major WILBERFORCE O. TIMES, solicitor, B.A., LL.B. (Cantab), a member of the firm of Hawkins & Co., Stevenage, Baldock and Hitchin, has resigned the office of Clerk to the Stevenage Urban District Council, but retains the appointment of Solicitor to the Council. Major Times—who was admitted in 1919—also holds the appointment of Clerk to Alleyne's Grammar School.

Mr. A. F. KIDSON, solicitor, Town Clerk of Folkestone, is about to retire on pension. He was admitted in 1894 and also holds the appointments of Legal Adviser to the Education Committee, Clerk and Solicitor to Jacob Stone & Jenkins and Stredwick and Hunt's Charities and the John Bowley Almshouses.

A UNIVERSAL APPEAL.

TO LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W. 9.

Wills and Bequests.

Mr. Godfrey Boulton, solicitor, Clerkenwell, left estate of the gross value of £50,782. The testator, after certain bequests to his wife and sons, gave: £100 to the Finsbury Dispensary, Brewer-street, Clerkenwell; £100 to the Clerkenwell Benevolent Society; £100 each to his clerks, W. H. Pratt, Thomas Marsh, H. R. Sandiford, and F. W. Grove, and £50 to Miss Tugwell; £100 to his wife's maid, Miss Wheeler; £50 to his late father's butler, Walter Walls; £100 to Mrs. M. E. Griffiths, of Bath, "as a slight recognition of her great care of my granddaughter Peggy." The ultimate residue of the property he gave to Trinity Hall, Cambridge, for such purposes as the governing body find most desirable. He stated, "In making the foregoing bequests to my sons I have taken into consideration the benefits they have already received from me and the returns they have made and their respective occupations."

Mr. Robert Edward Steel, solicitor, of Brentwood, King's-road, Cheltenham, left estate of the gross value of £6,066.

Mr. Edward Lawrance Boyer, of Coopers' Hall, Basinghall-street, E.C., and Alkham-road, Stoke Newington, Clerk and Solicitor to the Coopers' Company, died on 21st November, aged seventy, leaving estate of the gross value £10,153. He gives £500 to Ellen Mabel Bound, in recognition of her services; £200 to John Ernest Wilson Harley; £100 to the Metropolitan Hospital, Kingsland-road; and £100 to William Joseph Foster, Beadle of the Coopers' Company.

GIFTS TO MIDDLE TEMPLE PORTER.

PRESENTATION BY LORD READING.

In the Old Parliament Chamber of the Middle Temple on Tuesday, the 14th inst., Lord Reading (Treasurer), on behalf of the Inn, presented to Mr. John Ing, the senior library porter, a cheque for £100, together with a gold watch, suitably inscribed, in recognition of fifty years' loyal service.

Master H. T. Kemp, K.C., the senior member of the Library Committee, in introducing Mr. Ing to the Treasurer, called attention to the great esteem in which he was held by every member of the Inn. No praise was too great for the manner in which he had discharged his duties. Mr. H. A. C. Sturgess, the Librarian, said that Mr. Ing had been invaluable to him, personally, during the past eighteen and a half years.

In making the presentation, Lord Reading referred to the very warm affection which he and all the Masters of the Bench felt for Mr. Ing, and to the debt of gratitude which they all owed to him for his great help, extending over such a long period of years. Representatives of Mr. Ing's family had been in the service of the Inn for an uninterrupted period of 100 years, and their united service reached the remarkable figure of 154 years. Mr. Ing's great-grandfather was appointed under porter in 1828 and later became head porter, retiring in 1858 after thirty years' service. His grandfather, appointed in 1838, served in the library for thirty-nine years; and his father, appointed in 1861, occupied the same post for thirty-five years. In these days, when long service was the exception rather than the rule, that was a record to be proud of. He (Lord Reading), in his early days at the Bar, had known Mr. Ing's father personally, and he fully appreciated the great help they had both given him at that time.

In acknowledging the gift, Mr. Ing thanked the treasurer and Masters of the Bench for their kindness to him, and said that "To rest was to rust: to rust was to rot." He therefore hoped it would be long before he was obliged to rest.

SOLICITOR SENT TO PENAL SERVITUDE.

At Glamorgan Assizes, Charles John Herman Capell, a Porthcawl solicitor, was sentenced to three years' penal servitude for forgery and fraudulent conversion. Capell pleaded "Guilty" to twenty-four charges, involving £1,305. It was stated that by forging deeds he had received a total of £2,800. Passing sentence, Mr. Justice Mackinnon said that Capell had abused the trust of an honourable profession. The frauds were particularly mean, because in many of the cases the money was obtained from people who had been deprived of their life savings.

THE BRIBERY AND SECRET COMMISSIONS PREVENTION LEAGUE.

Lady Fry, the widow of the Right Hon. Sir Edward Fry, has accepted an invitation to become a vice-president of the Bribery and Secret Commissions Prevention League, Incorporated, of which Sir Edward Fry was president from the time of its foundation to his death. The twenty-first anniversary of the League and the hundredth birthday of Sir Edward Fry were celebrated by a meeting at the London Mansion House.

The Property Market, 1927.

(By J. TREVOR, F.A.I.)

On analysing the dealings in various departments during the past year, I am in a position to report an improvement in each. The lettings effected by me of City properties show an increase of about 22 per cent. on the previous year, the most notable increase being in respect of warehouses and factories within a radius of three miles of the Royal Exchange. In this case, the demand has greatly exceeded the supply. In the early part of the year there appeared to be a lack of enterprise, which has gradually worn off, partly due, perhaps, to a possible reduction in the income tax. The percentage of sales effected at the auctions conducted by me in my Estate Hall and elsewhere has been about 55 per cent., and a further 15 per cent. of the properties offered have sold within two months of the date of submission, clearly confirming the generally accepted view that an auction sale is frequently "a means to an end." Freeholds in the City are so scarce that, when one comes into the market, an abnormally high price is invariably obtained. As illustrating this point, I submitted a freehold property in Bishopsgate, E.C., in March, 1927, and in spite of the fact that the lease had about 12 years unexpired, the investment realised nearly 40 years' purchase.

There has been very little variation in the prices obtained for freehold and leasehold ground rents during the past two years, this class of investment, as also eligible mortgage securities, always commanding a ready market with trustees and insurance companies.

The Landlord and Tenant Act, 1927, which provides for the ayment of compensation to tenants of business premises for mprovements and goodwill, or, in lieu thereof, ensures the grant of a new lease on reasonable terms, will not, in my opinion, restrict the demand for this class of investment, as no fair-minded landlord would require more than the full market rental value. I, personally, consider that the new measure is an equitable one and should prevent unfair action by the rapacious landlord.

Experienced speculators have snapped up shop sites in ripe positions, which have invariably commanded high prices, either by private treaty or at auction. This is not surprising, as the multiple shopkeepers and joint stock banks always welcome the opportunity of extending their activities, and there are many instances where shops have been let simply on plan.

The capital value of the properties negotiated by me during 1927 is in excess of one million sterling.

MAGISTRATE AND YIDDISH.

The official interpreter at the Thames Police Court was interpreting the evidence of a female witness who spoke Yiddish, when the Magistrate (Mr. Cairns) asked whether Yiddish was a difficult language. The interpreter: It is, rather; it is a mixture of six or seven languages. The Magistrate: I know Hebrew. I suppose that would not be of much assistance to me? The interpreter: No. The Magistrate: That is discouraging. The interpreter: It is 90 per cent. corrupt German. The Magistrate: I shall not trouble. (Laughter.)

Court Papers.

Supreme Court of Judicature.

Date.	Rota of Registrars in Attendance on Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Russell.
Monday Feb. 20	Mr. Hicks Beach	Mr. Ritchie	Mr. *Hicks Beach	Mr. More
Tuesday 21	Synge	Bloxam	Bloxam	Hicks Beach
Wednesday 22	More	Jolly	*More	Bloxam
Thursday . 23	Ritchie	Hicks Beach	Hicks Beach	More
Friday 24	Bloxam	Synge	*Bloxam	Hicks Beach
Saturday .. 25	Jolly	More	More	Bloxam
	Mr. Justice Romer.	Mr. Justice Astbury.	Mr. Justice Tomlin.	Mr. Justice Clauson.
Monday Feb. 20	Mr. Bloxam	Mr. Ritchie	Mr. Synge	Mr. Jolly
Tuesday .. 21	*More	*Synge	*Jolly	Ritchie
Wednesday 22	*Hicks Beach	Jolly	*Ritchie	Synge
Thursday . 23	*Bloxam	*Ritchie	*Synge	Jolly
Friday 24	More	Synge	*Jolly	Ritchie
Saturday .. 25	Hicks Beach	Jolly	Ritchie	Synge

* The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 23rd February, 1928.

	Middle Price 14th Feb.	Interest Yield.			Yield with Redemption.		
		£	s.	d.	£	s.	d.
English Government Securities.							
Consols 4% 1957 or after	85½	4	13	6	—		
Consols 2½%	55	4	11	0	—		
War Loan 5% 1929-47	101¾	4	18	6	4	18	9
War Loan 4½% 1925-45	97	4	12	6	4	16	6
War Loan 4% (Tax free) 1929-42	101¼	3	19	0	3	19	6
Funding 4% Loan 1960-1990	88¼	4	10	6	4	14	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93¾	4	5	0	4	7	0
Conversion 4½% Loan 1940-44	97¼	4	12	0	4	16	0
Conversion 3½% Loan 1961	76⅝	4	11	6	—		
Local Loans 3% Stock 1921 or after	64½	4	13	0	—		
Bank Stock	256	4	12	0	—		
India 4½% 1950-55	93	4	16	6	4	18	6
India 3½%	70½	4	19	0	—		
India 3%	60½	4	19	0	—		
Sudan 4½% 1939-73	94	4	15	6	4	17	0
Sudan 4% 1974	84	4	15	6	4	17	0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	84	3	13	0	4	12	6
Colonial Securities.							
Canada 3% 1938	86	3	12	0	4	18	0
Cape of Good Hope 4% 1916-36	94	4	5	0	5	0	6
Cape of Good Hope 3½% 1929-49	82	4	6	0	5	0	0
Commonwealth of Australia 5% 1945-75	99	5	1	0	5	2	6
Gold Coast 4½% 1956	94	4	15	6	4	17	6
Jamaica 4½% 1941-71	94	4	17	0	4	18	6
Natal 4% 1937	94	4	5	0	5	0	0
New South Wales 4½% 1935-45	91	4	19	0	5	7	0
New South Wales 5% 1945-65	98	5	2	0	5	3	0
New Zealand 4½% 1945	96	4	13	0	4	17	6
New Zealand 5% 1946	102	4	18	0	4	16	6
Queensland 5% 1940-60	99	5	1	0	5	3	0
South Africa 5% 1945-75	102	4	18	0	5	0	0
South Australia 5% 1945-75	99	5	1	0	5	0	0
Tasmania 5% 1945-75	101	4	19	0	5	0	0
Victoria 5% 1945-75	99	5	1	0	5	0	0
West Australia 5% 1945-75	99	5	1	0	5	2	0
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	63	4	15	6	—		
Birmingham 5% 1946–56	103½	4	17	0	4	17	0
Cardiff 5% 1945–65	103	4	17	0	4	18	0
Croydon 3% 1940–60	69	4	7	0	5	0	0
Hull 3½% 1925–55	77	4	9	6	5	0	0
Liverpool 3½ Redeemable at option of Corporation	74	4	14	6	5	0	0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54	4	12	6	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64	4	13	6	—		
Manchester 3% on or after 1941	63	4	14	6	—		
Metropolitan Water Board 3% 'A' 1963–2003	65	4	12	0	4	17	0
Metropolitan Water Board 3% 'B' 1934–2003	65	4	12	6	4	15	6
Middlesex C. C. 3½% 1927–47	83	4	5	6	4	17	0
Newcastle 3½% Irredeemable	72	4	17	0	—		
Nottingham 3% Irredeemable	63	4	15	6	—		
Stockton 5% 1946–66	101	4	19	0	4	19	0
Wolverhampton 5% 1946–56	102	4	19	0	5	0	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	83	4	17	6	—		
Gt. Western Rly. 5% Rent Charge	101	4	19	0	—		
Gt. Western Rly. 5% Preference	100	5	0	0	—		
L. & N. E. Rly. 4% Debenture	79	5	1	6	—		
L. & N. E. Rly. 4% Guaranteed	75¾	5	6	0	—		
L. & N. E. Rly 4% 1st Preference	71	5	12	6	—		
L. Mid. & Scot. Rly. 4% Debenture	80	5	0	0	—		
L. Mid. & Scot. Rly. 4% Guaranteed	80	5	0	0	—		
L. Mid. & Scot. Rly. 4% Preference	76	5	5	0	—		
Southern Railway 4% Debenture	80	5	0	0	—		
Southern Railway 5% Guaranteed	100	5	0	0	—		
Southern Railway 5% Preference	95	5	5	0	—		

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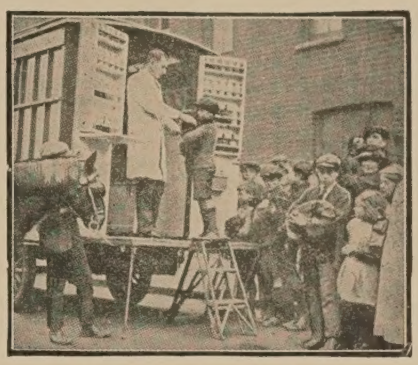

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Printed by THE SOLICITORS' LAW STATIONERY SOCIETY, LTD., at "Oyez" House, Fetter Lane, London, E.C.4, and Published at 29, Breams Buildings, E.C.4. ('Phone: Holborn 1853) Agents—The United States and Canada: The Carswell Co., Ltd., 145-149, Adelaide Street West, Toronto 2, Canada; India: Higginbothams, Publishers, Mount Road, Madras. and R. Cambray & Co., 10, Hastings Street, Calcutta; Australia and New Zealand: "The Times," 255a, George Street, Sydney, N.S.W. Saturday, February 18th, 1928.